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**FINAL**  
**CITY COUNCIL**  
  
**CITY OF WICHITA**  
**KANSAS**

City Council Meeting  
09:00 a.m. June 5, 2012

City Council Chambers  
455 North Main

**OPENING OF REGULAR MEETING**

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on May 22, 2012

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**AWARDS AND PROCLAMATIONS**

None

**I. PUBLIC AGENDA**

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. William Perry JR - Article and Ads concerning Best IWORK for Best Cabs.
2. Mike Gorden - Recognizing the Police and Sheriff Departments for a job well done during the Oaklawn tornado.

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**II. CONSENT AGENDAS (ITEMS 1 THROUGH 21)**

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)*



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**COUNCIL BUSINESS**

**III. UNFINISHED COUNCIL BUSINESS**

1. Repair or Removal of Dangerous and Unsafe Structures 2107 West Irving. (District IV)

RECOMMENDED ACTION: Take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) any taxes and specials are paid as of June 5, 2012; (2) the structures are maintained secure as of June 5, 2012 and is kept secured during renovation; and (3) the premise is kept clean and free of debris as of June 5, 2012, and is so maintained during renovation.

**IV. NEW COUNCIL BUSINESS**

1. *Appeal of Decision to Euthanize a Dangerous Dog.*

*(PULLED PER POLICE DEPARTMENT)*

2. Public Hearing and Tax Exemption Request, Milling Precision Tool. (District IV)

RECOMMENDED ACTION: Close the public hearing, and approve first reading of the ordinance granting Milling Precision Tool, Inc. a 31.5% tax exemption on the identified real property improvements for a five year term, plus a 31.5% tax exemption for a second five-year term, subject to City Council review.

3. Public Hearing and Request for Letter of Intent for Industrial Revenue Bonds, Kansas Health Foundation. (District I)

RECOMMENDED ACTION: Close the public hearing and approve the issuance of a Letter of Intent to issue industrial revenue bonds in the amount not-to-exceed \$7,000,000, and the application for a sales tax exemption certificate, and authorize the necessary signatures.

4. Public Hearing on an amendment to the K-96 Greenwich STAR Bond District Plan. (District II)

RECOMMENDED ACTION: Close the public hearing and place on first reading the ordinance adopting an amended district plan for the K-96 Greenwich STAR Bond Project District.

5. Ordinance amendments creating Community Advisory Board to provide assistance to Wichita Police Department and City Council on Racial and Biased-based Policing issues, Section 2.10.010 et. seq.

RECOMMENDED ACTION: Place ordinance on first reading.

6. Construction and Maintenance of an off-road Bicycle Trail by Kansas Singletrack Society (KSS) within Air Capital Memorial Park. (District IV)

RECOMMENDED ACTION: Approve the Trail Construction and maintenance agreement and authorize all necessary signatures.

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## **COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES**

### **PLANNING AGENDA**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

### **V. NON-CONSENT PLANNING AGENDA**

1. CON2012-00011 Conditional Use to permit “wrecking and salvage” on property located midway on the north side of East 8th Street, between North Mosley Avenue and North Washington Avenue. (District VI)

RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and deny the request; (simple majority vote); 2) approve the request subject to the recommended conditions of approval (three-fourths majority vote required) or 3) return the application to the MAPC for reconsideration (two-thirds majority vote required).

2. CUP2012-00008 Amendment to Parcel 4B of the Prairie Pond Plaza Commercial Community Unit Plan DP-273 to permit “vehicle and equipment sales” on property generally located northeast of the intersection of U.S. 54/400 Highway and South 143rd Street East. (District II)

RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the amendment to the CUP to permit vehicle and equipment sales, subject to the MAPC recommended conditions of approval; (simple majority vote); 2) deny the request (two-thirds majority vote to override the MAPC recommendation) or 3) return the application to the MAPC for reconsideration (simple majority vote).

3. ZON2012-00012 – City zone change request from SF-5 Single-family Residential to TF-3 Two-family Residential generally located mid-mile between East 13th Street North and East 21st Street North, along the west side of North 127th Street East, 1815 North 127th Street East. (District II)

RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the zone change request with Protective Overlay #269, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required); 2) deny the requested zone change (two-thirds majority required) or 3) return the application to the MAPC for further consideration (simple majority required).

## **HOUSING AGENDA**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Fern Griffith, Housing Member is also seated with the City Council.**

### **VI. NON-CONSENT HOUSING AGENDA**

None

## **AIRPORT AGENDA**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

### **VII. NON-CONSENT AIRPORT AGENDA**

None

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## **COUNCIL AGENDA**

### **VIII. COUNCIL MEMBER AGENDA**

1. Approval of travel expenses for Mayor Carl Brewer to attend the 2012 NLC Officers and Board of Directors Summer Meeting in Fort Wayne/Bluffton, Indiana, July 12-15, 2012.
2. *Approval of travel expenses for Council Member James Clendenin to attend the Midwest Institute Passenger Rail Commission Annual Meeting in Kalamazoo, Michigan, June 10-12, 2012.*

RECOMMENDED ACTION: Approve the expenditures.

### **IX. COUNCIL MEMBER APPOINTMENTS**

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

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(ATTACHMENT 1 – CONSENT AGENDA ITEMS 21)

**II. CITY COUNCIL CONSENT AGENDA ITEMS**

1. Report of Board of Bids and Contracts dated June 4, 2012.

RECOMMENDED ACTION: Receive and file report; approve Contracts;  
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2012</u>	<u>(Consumption on Premises)</u>
Tom Monahah	LW Clapp Golf Course**	4611 East Harry
James C McCarrell	College Inn Café**	1004 South Meridian
Steve Yager	Club Billiards*	925 West Douglas
<u>Renewal</u>	<u>2012</u>	<u>(Consumption off Premises)</u>
Scott F Duggan	The Fresh Market***	1800 North Rock Road Suite 120

\*Consumption/Tavern less than 50% of gross revenues from sale of food.

\*\*General/Restaurant 50% or more gross revenue from sale of food.

\*\*\*Consumption/Retailer grocery stores, convenience stores etc.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

RECOMMENDED ACTION: Receive and file.

4. Consideration of Street Closures/Uses.

- a. Community Events – LIV Music and Arts Festival. (District VI)

RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

5. Agreements/Contracts:

- a. Supplemental Agreement No. 1 for OneRain – Flood Warning System.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

6. Design Services Agreements:

- a. Supplemental Design Agreement No. 2 for Central Avenue from 135th Street West to 119th Street West. (District VI)
- b. Supplemental Design Agreement No. 1 for Broadway Bridge at 34th Street South. (District III)
- c. Design Supplemental Agreement No. 3-I-235 Freeway at 13th Street Flyover. (Districts V and VI)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Minutes of Advisory Boards/Commissions

Wichita Employees' Retirement System, April 18, 2012  
Deferred Compensation Board, February 16, 2012  
Deferred Compensation Board, Special Meeting, April 25, 2012

RECOMMENDED ACTION: Receive and file.

8. Payment for Settlement of Claim.

RECOMMENDED ACTION: Authorize payment of \$12,000 as full settlement of all possible claims arising out of the events which are the subject of this claim.

9. Purchase Option, Kansas Masonic Home. (District VI)

RECOMMENDED ACTION: Adopt the Resolution approving the Special Warranty Deed and Termination of Lease Agreement to convey the property to Kansas Masonic Home and authorize the necessary signatures.

10. National Recreation and Park Association (NRPA) Food Grant Program. (Districts I, II, III, and VI)

RECOMMENDED ACTION: Authorize staff to finalize the Memorandum of Understanding with NRPA.

11. Community event with alcohol consumption Resolution, LIV Music and Arts Festival. (District VI)

RECOMMENDED ACTION: Approve the Resolution.

12. Approval of Encroachment Agreement for 206 East 18th Street North. (District VI)

RECOMMENDED ACTION: Approve the agreement and authorize the necessary signatures.

13. Second Reading Ordinances: (First Read May 22, 2012)

- a. Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

## **II. CONSENT PLANNING AGENDA ITEMS**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

14. \*ZON2012-00013 Associated with CUP2012-10 – City zone change from LC Limited Commercial (“LC”) to GC General Commercial (“GC”) and Amendment #6 to DP-50, the Carriage House Commercial Community Unit Plan to allow a body shop, and associated vehicle storage and car wash; generally located east of Tyler Road, on the north side of Kellogg Drive/US 54, 8200 W. Kellogg Drive. (District V)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the zone change, subject to the additional recommended provisions of Amendment #6 and subject to a Lot Split; instruct the Planning Department to forward the ordinance for first reading when the Lot Split is completed (simple majority required).

15. \*VAC2011-27- Request to vacate portions of a utility easement and a blanket easement created by vacated street right-of-ways; generally located north of 17th Street North and east of Hillside Avenue. (District I)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

16. \*VAC2012-00008 - Request to vacate a portion of platted complete access control; generally located southeast of the 135th Street West and 31st Street South intersection and within the City of Wichita’s three-mile ring subdivision jurisdiction. (County Commission District 3)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

17. \*VAC2012-00011 - Request to vacate platted contingent street right-of-ways (ROWs), generally located east of 135th Street West, south of 21st Street North, at the end of 21st Court North. (District V)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

18. \*DER2012-00001 – Approval of Subdivision Regulation Amendments Regarding Reconfiguration of Reserves in Lot Splits.

RECOMMENDED ACTION: Approve the amendments to the Wichita-Sedgwick County Subdivision Regulations and place the Ordinance on first reading.

19. \*DED2012-00006 Dedication of Access Control for property located on the north side of Harry, West of Rock Road. (District II)

RECOMMENDED ACTION: Accept the Dedication.

## **II. CONSENT HOUSING AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Fern Griffith, Housing Member is also seated with the City Council.**

None

## **II. CONSENT AIRPORT AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

### **20. \*Electrical Equipment and Cabling, Package 25 - Wichita Mid-Continent Airport.**

**RECOMMENDED ACTION:** Initiate the project and approve the budget.

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Repair or Removal of Dangerous & Unsafe Structures  
2107 West Irving (District IV)

**INITIATED BY:** Office of Central Inspection

**AGENDA:** Unfinished Business

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**Recommendations:** Take appropriate action based on testimony received during the review hearing to consider condemnation and removal of a dangerous and unsafe structure at 2107 West Irving.

**Background:** On February 7, 2012, the City Council conducted a public hearing to consider condemnation of the dangerous and unsafe structure at 2107 West Irving.

At that hearing, Roberta Lillie, daughter of the property owner, appeared to represent the property and requested time to pay the taxes and repair the exterior. Council Member Michael O'Donnell made a motion to defer this case for ninety days to allow the property owner time to pay the back taxes, clean the premises, and complete the exterior repairs. The motion carried.

**Analysis:** On May 10, 2012, Central Inspection staff inspected the property and noted that no repairs have been made. There is still bulky waste, miscellaneous debris and tall grass and weeds on the premises. The structure has been kept secured.

As of May 10, 2012, the taxes have been paid through 2010. The 2011 taxes are still delinquent in the amount of \$211. There are no special assessments against the property.

**Financial Considerations:** Structures condemned as dangerous buildings are demolished with funds from the Office of Central Inspection's Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits OCI expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of OCI's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional \$500 administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

**Goal Impact:** This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods. Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

**Legal Considerations:** The owner and owner's representative have been informed of the date and time of the hearing.



**Recommendations/Actions:** It is recommended that the City Council take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) any taxes and specials are paid as of June 5, 2012; (2) the structures are maintained secure as of June 5, 2012 and is kept secured during renovation; and (3) the premise is kept clean and free of debris as of June 5, 2012, and is so maintained during renovation.

If any of the above conditions are not met, the Office of Central Inspection will proceed with demolition action and also instruct the City Clerk to have the resolution published once in the official City paper and advise the owners of these findings.

**Attachments:** None

City of Wichita  
City Council Meeting  
June 05, 2012

**TO:** Mayor and City Council

**SUBJECT:** Appeal of Decision to Euthanize a Dangerous Dog

**INITIATED BY:** Wichita Police Department

**AGENDA:** New Business

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**Recommendation:** Reinstate the order to euthanize a dangerous dog as defined by Section 6.04.045 of the code of the City of Wichita.

**Background:** Janice Claypole's dog was deemed dangerous by Animal Control personnel and ordered him euthanized on July 28, 2011. On the following day, a request was submitted for administrative review of this decision. This dangerous animal determination was based on attacks and bites occurring at 630 N. Kessler on April 28, 2009; 807 N. Baehr on May 8, 2011; 779 N. Illinois on June 6, 2011 and 804 N. West on July 24, 2011 all in Wichita, Ks. A hearing for administrative review was conducted on August 8, 2011.

Based on testimony of witnesses, evidence and documents reviewed, it was determined the dog is dangerous as defined by Section 6.04.045 of the code of the City of Wichita, and this fact must be addressed in order to preserve the safety and security of the community. The order to euthanize the dog was rescinded under specific conditions (see attached order declaring dog to be dangerous on August 15, 2011). Any future incidents involving the dog running at large or acting in a violent or aggressive manner was ordered to result in immediate impoundment of the animal and reinstatement of the order to euthanize.

On March 3, 2012, Animal Control responded to a vicious dog call at 816 N. West St. #3. Tena Taylor reported a dog had attacked her dog. The attack resulted in the death of Taylor's dog, a small black and white Chihuahua. A witness on scene identified and established the dog that attacked the Chihuahua. Janice Claypole's dog was impounded and taken to the animal shelter (see attached Animal Control report A12-065755-1 and Wichita Police Department report 12C023123).

On April 16, 2012, a hearing was held in the matter concerning the dog deemed dangerous by previous order dated August 15<sup>th</sup>, 2011, and owned and harbored by Janice Claypole within the corporate City limits of Wichita, Kansas. After review of witness testimonies and a preponderance of the evidence provided at the hearing, sufficient evidence was established to conclude the terms of the Administrative Order dated August 15<sup>th</sup>, 2011, were violated (see attached administrative hearing results letter on May 1, 2012, for specific violations of previous terms).

In accordance with the terms set forth in the Administrative Order issued August 15<sup>th</sup>, 2011, it was concluded from the hearing on April 16, 2012, the order to euthanize the dog should be reinstated immediately.

**Analysis:** The dog was deemed dangerous on August 16, 2011. On March 31, 2012 the dog attacked and killed a black and white Chihuahua. Janice Claypole violated the conditions of her dog's release as delineated in the Administrative Hearing results dated May 1, 2012, resulting in the order to euthanize be reinstated.

**Financial Considerations:** None for the City. If the dog is returned to Janice Claypole, she would be responsible for paying \$100 annual dangerous dog registration fee, as well as maintaining liability insurance in the amount of \$100,000 for each dog against the potential injury or damage liabilities and hazards associated with the ownership or possession of such dog and name the City of Wichita as an additional insured. Other requirements of release are listed in the attached Order Declaring Dog to be Dangerous, August 15, 2011.

**Goal Impact:** Implementation of this Code impacts the Quality of Life for Wichita citizens.

**Legal Considerations:** This hearing by City Council shall be a de novo quasi-judicial proceeding from which further appeal may be taken to the district court according to Section 6.04.210 of The City Code. Applicable ordinances and procedures have been reviewed by Law.

**Recommendations/Actions:** It is recommended that the City Council reinstate the order from August 15, 2011 to euthanize the dangerous dog as defined by Section 6.04.045 of the code of the City of Wichita.

**Attachments:**

Order Declaring Dog to be Dangerous – August 15, 2011

Administrative Hearing Results – May 1, 2012

Animal Control Activity Card (A12-065755-1)

Wichita Police Department Kansas Standard Offense Report (12C023123)

Officer's Report from A.C. Supervisor Dennis Graves – "Summary of Incidents involving the dog."

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Public Hearing and Tax Exemption Request (Milling Precision Tool) (District IV)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendation:** Close the public hearing and place the Ordinance on first reading.

**Background:** Milling Precision Tool manufactures detailed parts and components for general aviation, aerospace and military aircraft utilizing three and four axis milling machines. It also provides some small assembly of kits. Its primary markets are Kansas, North Carolina, Texas, Georgia, Mississippi, Turkey and Mexico.

After submitting a letter of intent to the City, Milling Precision Tool is now requesting approval of an Economic Development Tax Exemption (“EDX”) for a building expansion.

**Analysis:** Milling Precision Tool was founded over 50 years ago in Wichita. Over 40% of its sales are outside of the State of Kansas. Currently, Milling Precision Tool occupies approximately 17,500 square feet of office and manufacturing space. The current manufacturing space is at capacity and the company needs additional space to accommodate its growth. Milling Precision Tool intends to add an additional 6,700 square feet of manufacturing space at an approximate cost of \$250,000. The expansion plan also includes the acquisition of several new machines over the next five years at an approximate cost of \$900,000.

The expansion project will retain 21 jobs and add four more over the next five years.

Based upon capital investment and job creation/retention, Milling Precision Tool qualifies for a 31.5%, five-plus-five year tax exemption under the City’s economic development incentive policy.

**Financial Considerations:** Based on the 2011 mill levy, the estimated taxable value of exempted property for the first full year is approximately \$2,370. The value of the 31.5% real property tax exemption as applicable to taxing jurisdictions is:

City	\$637	State	\$ 30
County	\$580	USD 259	\$1,123

Wichita State University’s Center for Economic Development and Business Research performed a cost-benefit analysis indicating benefit-to-cost ratios, which are as follows:

City of Wichita General Fund	4.49 to one
City of Wichita Debt Service Fund	5.44 to one
Sedgwick County	4.10 to one

USD 259  
State of Kansas

3.17 to one  
118.43 to one

**Goal Impact:** Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption will encourage the business to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

**Legal Considerations:** The Law Department has approved the attached Ordinance and Economic Development Incentive Agreement as to form.

**Recommendations/Actions:** It is recommended that the City Council close the public hearing, and approve first reading of the ordinance granting Milling Precision Tool, Inc. a 31.5% tax exemption on the identified real property improvements for a five year term, plus a 31.5% tax exemption for a second five-year term, subject to City Council review.

**Attachments:** Ordinance, Economic Development Incentive Agreement

FIRST PUBLISHED IN THE WICHITA EAGLE ON JUNE 15, 2012

ORDINANCE NO. 49-280

AN ORDINANCE EXEMPTING PROPERTY FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13, OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY OF MILLING PRECISION TOOL, INC., SO EXEMPTED.

WHEREAS, Article 11, Section 13, of the Kansas Constitution provides that the governing body of the City may, by Ordinance, exempt from all ad valorem taxation all or any portion of the appraised value of certain property meeting the requirements of the constitutional provision; and

WHEREAS, the City of Wichita has adopted an Economic Development Incentive Policy by which the City will consider granting tax exemptions upon a clear and factual showing of direct economic benefit including the creation of additional jobs or the upgrading of existing jobs and the stimulation of additional private investment; and

WHEREAS, Milling Precision Tool, Inc., requests an ad valorem tax exemption on a proposed expansion project of 31.5% for a five-plus-five year term on the construction of an addition to its existing facilities; and

WHEREAS, Milling Precision Tool, Inc. has operated within the City for more than fifty years as a manufacturing company; and

WHEREAS, Milling Precision Tool, Inc., proposes a \$250,000 construction of an addition to its existing facilities located at 4225 W. 31<sup>st</sup> Street South, in southwest Wichita; and

WHEREAS, the City Council of the City of Wichita has reviewed the application and supporting documentation supplied by Milling Precision Tool, Inc., has reviewed the impact statements provided by Staff, and the Cost-Benefit Analysis by the Wichita State University and has conducted a public hearing on such application on June 5, 2012; and

WHEREAS, the City Council of the City of Wichita has found and determined:

1. Milling Precision Tool, Inc. is an existing business located in Wichita, Kansas, and intends to expand its business by construction of an addition to its existing facilities.

2. The construction of an addition for which exemption is given occurred after May 1, 2012. No exemption will be given for construction which occurred before that date.

3. Such construction of an addition is to be used exclusively for manufacturing articles of commerce.

4. By such expansion, Milling Precision Tool, Inc. will retain 21 employees and create new employment for 4 employees within five years after the start of the project.

5. Tax exemption will be given only for the construction of an addition to the existing facilities.

6. The property on which exemption is given will meet the requirements of the Kansas Constitution and the City of Wichita's Economic Development Incentive Policy.

7. Such ad valorem tax exemption is in the public interest providing for economic growth and benefit including the creation of jobs and stimulating additional private investment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS,

1. The City Council of the City of Wichita, Kansas hereby makes a factual determination that an ad valorem tax exemption of the type requested by Milling Precision Tool, Inc. is required to retain jobs in the State of Kansas, and that the property to be exempted is to be used exclusively for manufacturing articles of commerce.

2. Milling Precision Tool, Inc. is hereby granted an ad valorem tax exemption of 31.5% for a five-year term on the construction of an addition to its existing facilities and 31.5% for a second five years, subject to approval by the then current governing body, located within the Wichita City limits at 4225 W. 31<sup>st</sup> Street South, in southwest Wichita, at an estimated cost of \$250,000. Such exemption is to begin in the calendar year after the calendar year in which the expansion is completed, and may be terminated early (and Milling Precision Tool, Inc. may be required to repay amounts previously abated), in the event of any failure by Milling Precision Tool, Inc., to perform its obligations under the Economic Development Incentive Agreement it has executed with the City.

3. The Economic Development Incentive Agreement between the City of Wichita and Milling Precision Tool, Inc. is hereby approved.

4. The Office of Urban Development shall be responsible for monitoring the performance of Milling Precision Tool, Inc. and shall provide annual reports on such performance.

5. Such exemption is subject to verification that the level of employment at the time of the completion of the project is at least equal to the level of employment as stated in Milling Precision Tool, Inc.'s written request for ad valorem tax exemption as presented to the City Council and to administrative staff and dated February 16, 2012 and as stated in Milling Precision Tool, Inc.'s annually approved EEO/AA Plan.

6. Such exemption may hereafter be withdrawn by the City Council upon a finding that Milling Precision Tool, Inc. no longer is entitled to such exemption in accordance with the Economic Development Incentive Agreement, which Milling Precision Tool, Inc. has executed with the City.

7. The City Council may, at its discretion, require Milling Precision Tool, Inc. to return all funds exempted if there is a failure to meet the terms and conditions of the Economic Development Incentive Agreement which Milling Precision Tool, Inc. has executed with the City.

8. Upon finding that Milling Precision Tool, Inc. has failed to meet its obligations under the Economic Development Incentive Agreement, the City Council shall require the repayment of all prior amounts of taxes that have been exempted and shall withhold any future exemption of taxes on Milling Precision Tool, Inc.'s expansion project. All repayments shall be redistributed to the local taxing authorities at the proper taxing rates.

9. This Ordinance shall be in full force and effect from and after its passage and publication in the official City paper.

Passed by the governing body of the City of Wichita, Kansas this 12th day of June, 2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf, City Attorney



\_\_\_\_PUBLISHED IN THE WICHITA EAGLE ON \_\_\_\_

**NOTICE OF PUBLIC HEARING FOR  
GRANTING AN AD VALOREM TAX  
EXEMPTION FOR ECONOMIC  
DEVELOPMENT PURPOSES  
BY THE CITY OF WICHITA**

Public notice is hereby given that the governing body of the City of Wichita, Kansas will conduct a public hearing in connection with the granting by the City of Wichita, Kansas of a tax exemption for Economic Development purposes to Milling Precision Tool, Inc. Such hearing will be held on June 5, 2012, at 9:00 a.m., or as soon thereafter as possible, in the Council Chambers at City Hall, 455 North Main, Wichita, Kansas 67202.

Said tax exemption is proposed to be granted by the City for the construction of a building and purchase of certain manufacturing equipment under the authority of Article 11, Section 13, of the Kansas Constitution. Milling Precision Tool, Inc. is located at 4225 West 31<sup>st</sup> Street South in southwest Wichita. The governing body of the City will not adopt an Ordinance authorizing the exemption of ad valorem taxes until said public hearing has been concluded.

A copy of this notice, together with a copy of the proposed Ordinance for the governing body of the City to grant such ad valorem tax exemption is on file in the office of the City Clerk and is available for public inspection during normal business hours. In the event that said tax exemption is not ultimately put into effect for any reason, the City of Wichita, Kansas, shall not be deemed to have assumed or incurred any liability or obligation to Milling Precision Tool, Inc., or any other party by virtue of the above mentioned Ordinance or by virtue of any proceedings or actions taken in connection therewith.

All persons having an interest in this matter will be given an opportunity to be heard at the time and place specified. If, for any reason, the matter is continued from the time and place specified in this notice, said matter shall be heard at the time and date established by the City Council at the time set for the hearing as specified in this notice.

# **Economic Development Incentive Agreement**

**THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT** (the “Agreement”) is made and entered into on this \_\_\_\_ day of June, 2012, by and between the City of Wichita, Kansas, hereinafter referred to as the “City,” and Milling Precision Tool, Inc. hereinafter referred to as the “Company.”

**WHEREAS**, the Company currently operates a manufacturing facility in Wichita, Kansas, and, as will complete a building expansion; and

**WHEREAS**, both the City and the Company desire for the Company to continue operating its business in Wichita, Kansas; and

**WHEREAS**, the City desires to increase employment opportunities for the citizens of Wichita, Kansas, and to further the other goals advanced by its economic development incentive policy; and

**WHEREAS**, the Company warrants that it is capable of, and desires to, increase the number of employment positions at its Wichita, Kansas facility; and

**WHEREAS**, the City has designed an economic development incentive program to accomplish its goal of increasing employment opportunities in Wichita, Kansas; and

**WHEREAS**, the purpose of this Agreement is to state the terms and conditions under which the City will cooperate in furnishing said economic development incentives.

**NOW, THEREFORE**, in consideration of the mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

1. **THE COMPANY.** The Company agrees (to the extent not already hitherto performed) that it shall do the following:
  - A. Between May 1, 2012 and December 31, 2012, the Company will have constructed and addition to its existing facility, located at 4225 W. 31<sup>st</sup> Street South, Wichita, Kansas, at a cost of \$250,000, to be used exclusively for the purposes of manufacturing articles of commerce;
  - B. Maintain, throughout the period from the date of this Agreement to December 31, 2017, employment of not less than twenty-one (21) employees at the new facility;
  - C. On or prior to March 1, 2017, the Company will add an additional twenty-six (26) new jobs at the new facility, and thereafter, maintain employment

of not less than sixty-seven (67) employees at the new facility, through at least December 31, 2022;

- D. During the entire term of this Agreement, the Company will continuously maintain the average wage paid to its employees at a level (1) equal to or greater than the average wage paid by businesses in the Wichita Metropolitan Statistical Area with the Company's NAICS classification, or alternatively, (2) greater than the average wage for all jobs in the Wichita Metropolitan Statistical Area excluding wages paid by businesses classified in NAICS Sector 326;
- E. During the entire term of this Agreement, the Company will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the City, and will annually file its Equal Employment Opportunity/Affirmative Action Plan with the City;
- F. During the entire term of this Agreement, the Company will timely pay all *ad valorem* property taxes levied on its real or personal property within Sedgwick County, Kansas;
- G. During the entire term of this Agreement, the Company will ensure that it does not discriminate or permit discrimination against any person on the basis of race, color, national origin or ancestry, religion, sex, age, disability or marital status in its operations or services, and the Company will comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, *et seq.*; the Code of the City of Wichita Section 2.12.950; and, any laws, amendments or regulations promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently existing or hereafter enacted, which pertains to civil rights and equal employment opportunity;
- H. During the entire term of this Agreement, the Company will comply with all applicable governmental laws, rules and regulations; and,
- I. During the entire term of this Agreement, the Company will cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the Company and any inspection of the Company's premises or interviews with the Company's staff.

2. **EFFECT OF COMPANY'S BREACH; REMEDIES.** The Company acknowledges that in the event of its noncompliance with any of its obligations or

agreements under the foregoing Section 1, the City will not have received the social and economic development benefits expected in connection with its entry into this Agreement and its furnishing of the economic development incentives provided for hereunder, and the resulting loss to the City will be difficult to measure. In such event, Company shall be required to pay to the City, as liquidated damages, or as a payment in lieu of tax, an amount equal to the *ad valorem* taxes that would theretofore have been payable but for the tax exemption referred to in Section 3 of this Agreement, and the City shall be entitled to take action to cancel and revoke such exemption for any subsequent period. No delay or omission by the City to enforce any of its rights as provided for herein shall impair such right, nor shall any such delay or omission be construed to be a waiver of such right.

3. **THE CITY.** So long as the Company meets and performs its obligations under this Agreement, it is the City's intention that the acquisition, renovation and equipping of a building by the Company pursuant to Section 1.A., above, shall be entitled to an 100% exemption from *ad valorem* taxation for a period of five (5) calendar years, commencing January 1, 2013, and provided proper application is made therefor. It is the City's further intention that the building expansion shall be entitled to a 100% exemption from *ad valorem* taxation for an additional period of five years from January 1, 2018 to December 31, 2022, subject to the approval, in 2017, of the then current governing body. The City agrees that, during the term of this Agreement, and so long as the Company continues to meet and perform all of its obligations under this Agreement, the City will reasonably cooperate with the Company's efforts to perfect the intended exemption before the Kansas Court of Tax Appeals, and to make all necessary annual filings required to maintain such *ad valorem* tax exemption in full force and effect during the term of this Agreement, in accordance with K.S.A. 79-210 *et seq.*
4. **TERM.** This Agreement shall commence on the date first written above, and shall end on December 31, 2022.
5. **INCORPORATION OF APPENDIX.** Appendix A (Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements) is attached hereto and made a part hereof as if fully set out herein.
6. **ENTIRE AGREEMENT.** This Agreement and any Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor of any force or effect. In the event of a conflict between the terms of this Agreement and the terms contained in an Appendix, Statement of Work or other attachment, the terms of this Agreement will control.

7. **NOTIFICATION.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

City: Office of Economic Development  
Attn: Economic Development Administrator  
455 North Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

and

Department of Law  
Attn: City Attorney  
455 North Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

Company: Milling Precision Tool, Inc.  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. **AUTHORITY.** Each person executing this Agreement represents and warrants that they are duly authorized to do so on behalf of the entity that is a party hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

CITY OF WICHITA, KANSAS

ATTEST:

\_\_\_\_\_  
Carl Brewer, Mayor

\_\_\_\_\_  
Karen Sublett, City Clerk

MILLING PRECISION TOOL, INC.

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **APPENDIX A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
  5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.



**City of Wichita  
City Council Meeting  
June 5, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Public Hearing and Request for Letter of Intent for Industrial Revenue Bonds  
(Kansas Health Foundation) (District I)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendation:** Close the public hearing and approve the issuance of a Letter of Intent to issue industrial revenue bonds in the amount not-to-exceed \$7,000,000, and the application for a sales tax exemption certificate, and authorize the necessary signatures.

**Background:** The Kansas Health Foundation (“KHF”) is a Kansas Not-For-Profit corporation that was incorporated in 1978 and is a 501 (c) (3) private foundation. KHF is a health philanthropy dedicated to long-term strategies that will improve the health of all Kansans. KHF is requesting a Letter of Intent for Industrial Revenue Bonds in an amount not-to-exceed \$7,000,000 for the purpose of financing the cost of constructing a 36,000 square foot expansion to its existing facility located at 309 E. Douglas, in downtown Wichita. No ad valorem tax abatement is being requested in connection with the proposed bond issue.

**Analysis:** Since 1985, KHF has disbursed over \$485 million in charitable, qualifying distributions in pursuing its mission. The expansion will serve as the new state-wide headquarters for the Kansas Leadership Center (“KLC”), a not-for-profit organization created by KHF in 2005, and a conference center for KHF. The conference center will have a mix of large and small meeting spaces as well as a “town hall” type meeting space for 200. The building will be designed to obtain a LEED Gold Certification from the U.S. Green Building Council.

KLC expects to bring in 1,000 Kansans annually for leadership training programs, meetings and conferences.

An analysis of the sources and uses of project funds is:

Bond Proceeds	\$7,000,000
Foundation Equity	\$1,600,000
<b>Total Sources</b>	<b>\$8,600,000</b>
Project Construction	\$8,400,000
Professional Fees/Cost of issuance	\$ 200,000
<b>Total Uses</b>	<b>\$8,600,000</b>

**Financial Considerations:** The Kansas Health Foundation agrees to pay all costs of issuing the bonds and agrees to pay the City’s \$2,500 annual IRB administrative fee for the term of the bonds.

The bonds will be placed privately with Intrust Bank. The cost/benefit analysis performed by the WSU Center for Economic Development and Business Research reflects the following benefit-cost ratios:

City of Wichita	1.96 to one
City General Fund	0.98 to one
City Debt Service Fund	N/A
Sedgwick County	1.96 to one
State of Kansas	3.06 to one

**Goal Impact:** Economic Vitality, Quality of Life and Core Area Neighborhood. Providing tax-exempt financing to not-for-profit service providers ensures the community is being enhanced with the improvement of quality health and leadership services delivered; and promotes revitalization of the City's core area.

**Legal Considerations:** The law firm of Kutak Rock, LLP will serve as bond counsel in the transaction. All bond documents will be subject to review and approval as to form by the Law Department of prior to the issuance of any bonds.

**Recommendations/Actions:** It is recommended that the City Council close the public hearing and approve the issuance of a Letter of Intent to issue industrial revenue bonds in the amount not-to-exceed \$7,000,000, and the application for a sales tax exemption certificate, and authorize the necessary signatures.

**Attachments:** Letter of Intent Application.



May 16, 2012

Mayor Carl Brewer and  
Members of the City Council  
City of Wichita  
City Hall – 455 North Main  
Wichita, KS 67202

Re: Proposed City of Wichita, KS  
Industrial Revenue Bonds (Kansas Health Foundation)  
Kansas Health Foundation Building Expansion

Dear Mayor Brewer and Members of the Council:

In accordance with procedures and policies established by the City's governing body, this letter is to request approval by the City Council for the City to execute a Letter of Intent to issue tax exempt Industrial Revenue Bonds in an amount not to exceed \$7,000,000 for the project referenced above. The following information is submitted in support of such request:

**1. Name and Address of Requesting Organization**

Kansas Health Foundation (Foundation)  
309 East Douglas  
Wichita, KS 67202

**2. Name and Address of Foundation Principal Officers and Directors**

Steve Coen  
President & CEO  
309 East Douglas  
Wichita, KS 67202  
316-491-8423

Evan Meyers  
Vice-President & Chief Financial Officer  
309 East Douglas  
Wichita, KS 67202  
316-491-8435

A list of current Directors of the Foundation is attached as **Exhibit A**.

**3. General Description of the Nature of Business**

The Foundation is a Kansas Not-For-Profit corporation, incorporated in 1978 and is a 501 (c) (3) private non-operating foundation within the meaning of the Internal Revenue Code. The Foundation is a health philanthropy dedicated to improving the health of all Kansans. In 1985, the Foundation received the sales proceeds from the sale of Wesley Medical Center to Hospital Corporation of America.

May 16, 2012  
Mayor Carl Brewer

The Foundation is committed to supporting strategies that will make Kansas a healthier and better place to live in the long-run, rather than funding temporary fixes for immediate health problems. To be effective, the Foundation focuses its work in six areas:

- Promoting the healthy behaviors of Kansans
- Strengthening the public health system
- Improving access to health care for Kansas children
- Growing community philanthropy
- Providing health data and information to policy makers
- Building civic leadership

Since 1985, the Foundation has disbursed over \$485 million in charitable, qualifying distributions in pursuing its mission.

#### **4. Competition**

As a philanthropy, the Foundation is not a competitor, but seeks to accomplish its mission through collaboration with organizations throughout the state, including other not for profit organizations, businesses, and units of state and local government.

#### **5. General Description of the Proposed Project and Improvements**

The Foundation will construct a 36,000 square foot addition to its present building, located at 309 E. Douglas. The building will serve as the new state-wide headquarters for the Kansas Leadership Center, a not-for-profit organization created by the Foundation in 2005, and a conference center for the Foundation. Proceeds of the bond issue will be used to fund construction of the building, which will be known as the Kansas Leadership Center and Kansas Health Foundation Conference Center (Center).

#### **6. Specific Location of the Proposed Project**

The project will be located on land owned by the Foundation, adjacent to the Foundation's current building, and presently being used for employee and guest parking. The legal description is Lots 13, 15, 19, 21 and 23, N.A. English's Addition, Wichita, KS. (Southwest corner of Douglas Avenue and Topeka Street).

#### **7. Benefits of the Project to the City of Wichita**

The Center is designed specifically to bring together Kansans in furtherance of the Foundation's health purposes (paragraph 3, above). The Center will feature flexible meeting space for hosting conferences, large group meetings, small gatherings, lectures and leadership training. A major feature of the building will be a "town hall" type meeting space for 200 people plus two classrooms with capacity for 50 people per room.

May 16, 2012  
Mayor Carl Brewer

The Kansas Leadership Center expects to bring approximately 1,000 Kansans a year to its new headquarters for leadership training programs, meetings and conferences, with emphasis on strengthening community leadership to improve health in those communities. Many out-of-town participants are expected to use area hotels and dining establishments while attending Center activities.

This building will be the first new construction along the City's main downtown corridor in 38 years. It is perfectly aligned with Project Downtown, the City's plan for downtown revitalization, and will complete the first full block of projects since the passage of Project Downtown nearly 15 months ago.

#### **8. The Dollar Amount of the Bonds Requested**

The principal amount of the Bonds being requested is an amount not to exceed \$7,000,000.

#### **9. Proposed Use of Bond Proceeds**

It is anticipated the proceeds from the sale of the proposed Bonds, together with other monies to be provided by the Foundation, will be applied substantially as follows:

Bond proceeds	\$7,000,000
Foundation equity	<u>1,600,000</u>
Total sources	<u>\$8,600,000</u>
Project construction	\$8,400,000
Professional fees and costs of bond issuance	<u>200,000</u>
Total uses	<u>\$8,600,000</u>

#### **10. Underwriting Agreement**

There is no underwriter for the Bonds. The Bonds are to be privately placed.

#### **11. Bond Counsel Services**

The Foundation will agree to pay for the services of bond counsel to be selected by the City, and in addition, the Foundation will agree to pay all costs incurred by the City relating to the issuance of the Bonds regardless of whether the Bonds are ultimately approved or issued.

#### **12. Ad Valorem Taxes**

The Foundation's current real and personal property are exempt from ad valorem property taxes under Kansas law (K.S.A. 79-201 *Second*), since the property is used exclusively for charitable purposes. Therefore, no ad valorem tax abatement is being requested in connection with the proposed bond issue.

May 16, 2012  
Mayor Carl Brewer

**13. Administrative Fees of the City**

The Foundation will agree to make payments of the City's administrative fees each year for the life of the Bonds, and in addition, the Foundation will agree to pay all costs incurred by the City relating to the issuance of the Bonds regardless of whether the Bonds are ultimately approved or issued.

**14. The Effects of the Proposed Project on the Ambient Air Quality of the City of Wichita and Sedgwick County**

In our opinion, the proposed Project will have no significant adverse effect on the ambient air quality of the City of Wichita or Sedgwick County. The building is being designed to obtain a LEED Gold Certification from the U.S. Green Building Council.

**15. Name and Address of Bond Counsel**

Kutak Rock, LLP  
1010 Grand Blvd., Suite 500  
Kansas City, MO 64106  
Attention: Dortha Riley  
(816) 960-0090

**16. Name and Address of Kansas Health Foundation Special Bond Counsel**

Gilmore & Bell, P. C.  
100 N. Main, Suite 800  
Wichita, KS 67202  
Attention: Joe Norton  
(316) 267-2091

**17. Name and Address of Kansas Health Foundation General Counsel**

Bever Dye, L.C.  
Epic Center  
301 North Main, Suite 600  
Wichita, KS 67202  
Attention: Jack Flesher  
(316) 263-8294

**18. Name and Address of Participant Bank**

INTRUST Bank N.A.  
105 North Main  
Wichita, KS 67202  
Attention: Gary Schmitt  
(316) 383-1964

May 16, 2012  
Mayor Carl Brewer

**19. Equal Employment Opportunity**

The Foundation agrees to comply with applicable policies of the City of Wichita with respect to equal employment opportunity and to submit for approval an Equal Employment/Affirmative Action Plan.

**20. Financial Information**

The Foundation's audited financial statements for the years ended December 31, 2010 and 2009 are attached as **Exhibit B**. The Foundation's audited financial statements for the year ended December 31, 2011 will be submitted to the City after acceptance by the Foundation board of directors in July, 2012.

**21. Selection of Trustee**

The Foundation agrees that so long as the Bonds remain outstanding, it will not have a commercial banking relationship with the Trustee designated pursuant to the Indenture, unless the Bonds are privately placed. (NOTE: These bonds will be privately placed.)

So that the Foundation may finalize arrangements with the respect to the Project, it is requested that the City Council authorize the Mayor to execute a Letter of Intent, for and on behalf of the City, whereby the City will indicate its intent to issue its Private Placement Bank Industrial Revenue Bonds for the purposes described herein.

The Foundation is aware that such Letter of Intent is only an indication of the City's intent to issue the Bonds to assist in financing the proposed Project, and that issuance of the Bonds remains subject to final agreement on the terms and conditions of the Bond Ordinance, Trust Indenture, Lease Agreement, Guaranty Agreement, any other financing agreement and related documents. However, upon issuance of such letter of Intent, the Foundation is prepared to proceed in reliance thereon.

If further information is necessary for consideration of this request for Approval of the Letter of Intent, please contact the undersigned.

Respectfully submitted,



Steve Coen  
President and CEO  
Kansas Health Foundation

cc: Allen Bell, Director, City of Wichita Office of Urban Development  
Gary Schmitt, Executive Vice-President, INTRUST Bank, NA  
Jack Flesher, Bever, Dye, L.C.  
Joe Norton, Gilmore and Bell, P.C.



**Board of Directors - 2012**

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REVISED 6-4-12

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Public Hearing on an amendment to the K-96 Greenwich STAR Bond District Plan (District II)

**INITIATED BY:** Urban Development Office

**AGENDA:** New Business

**Recommendation:** Close the public hearing and place the ordinance on first reading.

**Background:** On February 14, 2012, the City Council held a public hearing and approved the establishment of the K-96 Greenwich STAR Bond District. On March 6, 2012, the ~~District~~ **district** was adopted following notification from the State Secretary of Commerce approving ~~adoption~~ **creation** of a STAR ~~Bond District~~ **bond district**.

The ordinance establishing the ~~District~~ **district** included a ~~District Plan~~ **district plan** which provides a description of the area within the district and the possible uses of STAR ~~District~~ **bond** financing. The ~~District Plan~~ **district plan** identified most but not all of the eligible expenses that are intended to be used in the ~~District~~ **district**. An amendment to the ~~District Plan~~ **district plan** is needed in order to include all eligible expenses within the STAR ~~Bond District~~ **bond district**. Amendment of the ~~District Plan~~ **district plan** requires holding a new public hearing at a time and place set by resolution by the City Council.

On May 1, 2012, the City Council adopted a resolution stating its intent to consider an amendment to the district plan. The resolution set 9:30 a.m. on June 5, 2012, or as soon thereafter as possible as the time for a public hearing before the City Council on this matter. Copies of the resolution were mailed, by certified mail, to all owners and occupants of the property in the district, and to the board of Sedgwick County Commissioners, the U.S.D. 265 Board of Education and the U.S.D. 375 Board of Education, according to state law.

**Analysis:** The STAR ~~Bond~~ **bond** statute requires a ~~District Plan~~ **district plan** which identifies the property within the district and describes in a general manner all of the buildings, facilities and improvements in that area proposed to be constructed or improved in each STAR ~~Bond~~ **bond** project area. The ~~District Plan~~ **district plan** approved by the City Council identifies all eligible expenses to be paid for by STAR bond financing, except for the cost of developing the multisport athletic complex.

Bond Counsel has determined that by listing certain eligible expenses in the ~~District Plan~~ **district plan**, the City is therefore limited to only the eligible expenses identified. In order for the City to fully utilize STAR financing for its intended purpose within the K-96 Greenwich STAR Bond District, the ~~District Plan~~ **district plan** must be amended to include language to permit the additional intended uses.

**Financial Considerations:** The publication and mailing costs associated with amending the STAR bond district will be paid from the Economic Development Fund and later will be transferred to the STAR bond project account if the STAR bond project is approved. Any STAR bonds issued for this project will be special obligation bonds of the City, payable solely from the incremental sales tax revenue remitted by the Kansas Department of Revenue for payment of the bonds. All eligible costs of the City relating to the project will be reimbursed with STAR bond proceeds.

**Goal Impact:** The City Council's goals for Economic Vitality and Affordable Living and Quality of Life are advanced through the use of STAR bonds to partner with developers to create a major commercial, entertainment and tourism site that will bring significant economic value to the City, enhance the satisfaction of residents and improve Wichita's competitive position as a desirable place to live and work. The goal of Efficient Infrastructure is served by the completion of the K-96 and Greenwich Road freeway interchange.

**Legal Considerations:** The attached ordinance adopting the amended district plan has been approved as to form by the Law Department. By law, the Board of County Commissioners and the Board of Education will have thirty days from the closing of the public hearing to make a finding that the proposed STAR bond project will have an adverse impact on county or school district property taxes and thereby require repeal of the STAR bond district. Re-approval of the district by the Secretary of Commerce is not required.

**Recommendations/Actions:** It is recommended that the City Council close the public hearing and place on first reading the ordinance adopting an amended district plan for the K-96 Greenwich STAR Bond Project District.

**Attachments:** Ordinance with Exhibits

**PUBLISHED IN THE WICHITA EAGLE ON JUNE 15, 2012**

**ORDINANCE NO. 49-281**

**AN ORDINANCE ADOPTING AN AMENDMENT TO THE DISTRICT PLAN FOR THE  
K-96 GREENWICH STAR BOND DISTRICT**

**WHEREAS**, by Resolution No. R 12-006 dated January 10, 2012, the City of Wichita adopted a STAR bond district plan which identifies proposed project areas along with a general description of the buildings, facilities and improvements that are proposed to be constructed or improved (the District Plan); and

**WHEREAS**, by Ordinance No. 49-208 adopted March 6, 2012, the City of Wichita established a STAR bond district pursuant to K.S.A. 12-17 165 et. seq., as amended, known as the K-96 Greenwich STAR bond district; and

**WHEREAS**, the City wishes to amend the District Plan to include the ability to fund the cost of developing a multisport athletic complex; and

**WHEREAS**, the Governing Body of the City of Wichita, Kansas, by Resolution number R-12-088 adopted May 1, 2012, set a public hearing to consider the adoption of the K-96 Greenwich district plan amendment on the 5<sup>th</sup> day of June, 2012, at 9:30 a.m. or thereafter, in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas; and

**WHEREAS**, the Governing Body is authorized following the public hearing to adopt the Amendment to the District Plan by Ordinance.

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE  
CITY OF WICHITA, KANSAS:**

1. The Amended K-96 Greenwich District Plan is attached hereto as Attachment C, and is incorporated by reference as though fully set forth herein. Said amendment is hereby adopted as the Amended District Plan for the K-96 Greenwich STAR bond district.

2. This Ordinance shall be in force and effect from and after its passage, approval, and publication once in the official City paper.

**ADOPTED at Wichita, Kansas, this 12th day of June, 2012.**

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

\_\_\_\_\_  
Carl Brewer, Mayor

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf, City Attorney

**Exhibit “C:”**

**STAR BOND PROJECT DISTRICT PLAN  
FOR THE DEVELOPMENT OF THE  
K-96 GREENWICH STAR BOND DISTRICT**

**June 5, 2012**

**SECTION 1: PURPOSE**

A STAR bond project district plan is required for inclusion in the establishment of a STAR bond district under K.S.A. 12-17,165. The district plan is a preliminary plan that identifies proposed STAR bond project areas within the district, and describes in a general manner the buildings, facilities and improvements to be constructed or improved.

**SECTION 2: DESCRIPTION OF SALES TAX AND REVENUE BOND INCOME**

STAR bond financing allows the Kansas Department of Revenue to measure and capture the incremental increase in state and local sales tax revenue collected within an approved STAR bond district and remit a portion of said revenue to the city or county in which the STAR bond district is located, to pay the principal and interest on STAR bonds issued to finance certain eligible costs associated with an approved STAR bond project. Projects financed through STAR bond financing include major commercial entertainment and tourism developments that create a significant “increment” in state and local sales tax income. The increment is determined by subtracting the total amount of sales tax revenue collected within the boundaries of a STAR bond project district during the 12 months preceding the establishment of the STAR bond project district from the total sales tax revenue collected in the district in each 12 month period following the approval of the STAR bond project during the term of the STAR bond project. The portion of the sales tax increment paid to the City is net of a small administrative fee assessed by the Department of Revenue.

In Wichita, the one-cent local option sales tax is assessed by Sedgwick County and a major portion of the revenue is distributed by the County to the City of Wichita, based on population and other fiscal considerations. By City ordinance, 50% the local sales tax revenue received by the City is dedicated to paying for streets, roads and bridges and is pledged to the repayment of City bonds issued for that purpose. The other 50% is dedicated to property tax abatement, and only that portion of the local sales tax increment collected in the STAR bond project district can be used to pay the principal and interest on STAR bonds.

**SECTION 3: BUILDINGS AND FACILITIES**

The proposed STAR bond project district, whose boundaries are set forth in Exhibits “A” and “B” attached hereto, is an area that meets the criteria for designation as a “major commercial entertainment and tourism area, including a major multi-sport athletic complex” as defined by state law governing the establishment and financing of STAR bond project districts. Property located within a major commercial entertainment and tourism area is legally eligible for establishment of a STAR bond project district.

The buildings and facilities to be constructed or improved in the STAR Bond project district may

be described in a general manner as a mixed-use development consisting of some or all of the following uses: major multi-sport athletic complex; destination attractions; retail uses; restaurant uses; other general commercial development; hotel uses; a public highway interchange; and associated public and private infrastructure.

#### **SECTION 4: PROJECT AREAS AND ELIGIBLE PROJECT COSTS**

It is anticipated that multiple STAR Bond Project Areas will be determined for the district under the STAR Bond project plan, which must be adopted by the City Council by a 2/3 majority vote before the expenditure of any funds to be financed with STAR bonds.

STAR bond financing may be used to pay for the purchase of real estate and site preparation including the demolition of structures and utility relocations, as well as on public infrastructure improvements, such as streetscape, public parking, utility extensions, landscaping, public plazas, and multi-sport athletic complex and any other items permitted to be financed by statute.

#### **SECTION 5: CONCLUSION**

After the establishment of the STAR bond project district, any projects to be funded with STAR bond financing will be presented to the City Council for approval through the adoption of a STAR Bond Project Plan. The Project Plan will identify the specific project area located within the established STAR bond project district and will include detailed descriptions of the projects as well as a financial feasibility study showing that the economic benefits out-weigh the costs. The Project Plan must be reviewed by the Metropolitan Planning Commission and submitted to a public hearing following further notification of property owners and occupants, before it can be adopted by a two-thirds majority vote of the City Council. Following approval by the City Council, the Project Plan must be approved by the Kansas Secretary of Commerce. Only then can STAR bond proceeds be spent on the approved projects.

STAR bond financing does not impose any additional taxes on sales or on property located within the STAR bond project district.

**City Of Wichita  
City Council Meeting  
June 5, 2012**

**TO:** Mayor and City Council Members

**SUBJECT:** Ordinance amendments creating Community Advisory Board to Provide Assistance to Wichita Police Department and City Council on Racial and Biased-based Policing Issues, Section 2.10.010 et. seq.

**INITIATED BY:** Police Department

**AGENDA:** New Business

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**Recommendation:** Place ordinance on first reading.

**Background:** In 2011, the Kansas Legislature amended the state statutes regarding racial profiling and biased-based policing. The statutes require law enforcement agencies to adopt policies regarding racial and biased-based policing. These amendments became effective July 1, 2011 and require municipalities to establish a community advisory board or provide an annual report with detailed data regarding every vehicle or pedestrian stopped by law enforcement to the Kansas Attorney General.

**Analysis:** Since 2005, the Wichita Police Department has had a Citizens Racial Profiling Board. The Board is composed of up to 21 citizen volunteer members. Because of the board's independent status, it has had limited interaction with the City Council.

The statutory amendments in 2011, mandate either a Community Advisory Board be established by the governing body, not the law enforcement agency, to provide input and guidance to law enforcement on training, community outreach and policy recommendations to law enforcement offices or that the law enforcement agency collect comprehensive data on every vehicle or pedestrian stop. Due to the costs associated with the requirements of collection and analysis of data requested to be collected, staff is recommending the establishment of a Community Advisory Board.

In late 2010, the City Manager restructured the City Manager's Review Board to expand its duties to include the review of completed Police Department investigations related to racial profiling and to review existing Police Department policies and procedures as directed by the City Manager.

In lieu of creating another board, it is recommended that the City Manager's Review Board serve as the City's Community Advisory Board to provide input to the City Council and to the Police Department on racial and biased-based policing issues. The existing board will continue to work, in conjunction with the Wichita Police Department, on the issue of Racial Profiling. One member from the current board will be appointed to the City Manager's Review Board.

The statutes additionally allow, but do not require, law enforcement agencies to have a training advisory board which would review proposed racial and biased-based policy training curriculum. By statute, this board is to be composed of five or more persons representing law enforcement, community leaders and educational leaders. It is recommended that this board be composed of three members from the City Manager's Review Board and two law enforcement representatives appointed by the Chief of Police.

The amendments are necessary to bring the City into compliance with the applicable state statutes regarding racial and biased based policing.

**Financial Considerations:** None

**Goal Impact:** The agenda item impacts the goal indicator to provide a Safe and Secure Community.

**Legal Considerations:** The amendments have been prepared and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council place the ordinance on first reading.

**Attachment:** Ordinance.

First Published in The Wichita Eagle on 6/15/2012

05/27/12

ORDINANCE NO. 49-282

AN ORDINANCE CREATING SECTIONS 2.10.010, 2.10.015, 2.10.020, 2.10.030, 2.10.040, 2.10.050, 2.10.060, 2.10.070 AND 2.10.080 OF THE CODE OF THE CITY OF WICHITA, KANSAS, ESTABLISHING THE WICHITA COMMUNITY ADVISORY BOARD.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 2.10.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Community Advisory Board.** The City Manager’s Review Board shall serve as the Wichita Community Advisory Board.”

SECTION 2. Section 2.10.015 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Definitions.** As used in this chapter, the following terms shall be defined as:

‘Enforcement action’ means: any law enforcement act during a nonconsensual contact with an individual(s) in 1) determining the existence of probable cause to take into custody or to arrest an individual; 2) constituting a reasonable and articulable suspicion that an offense has been or is being committed so as to justify the detention of an individual or the investigatory stop of a vehicle; or 3) determining the existence of probable cause to conduct a search of an individual or a conveyance.



‘Racial or other biased-based policing’ means: the unreasonable use of race, ethnicity, national origin, gender or religion by a law enforcement officer in deciding to initiate an enforcement action. It is not racial or other biased-based policing when race, ethnicity, national origin, gender or religion is used in combination with other identifying factors as part of a specific individual description to initiate an enforcement action.”

SECTION 3. Section 2.10.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Purpose of Community Board.** The purpose of the Wichita Community Advisory Board is to advise and assist the City Manager and the Wichita Police Department in policy development, education, community outreach and communications related to racial and other biased-based policing.”

SECTION 4. Section 2.10.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Specific Duties of Community Advisory Board.** The Wichita Community Advisory Board shall:

1. Review Wichita Police Department policies regarding racial and other biased-based policing and make recommendations to the Chief of Police for the amendment of those policies or the adoption of additional policies on that subject as it deems necessary.

2. Assist the Police Department with community outreach opportunities involving racial and other biased-based policing prevention.

3. Advise the Police Department about community concerns related to racial and other biased-based policing.

4. Receive annual reports regarding racial and other biased-based policies from the Wichita Police Department. At a minimum, the report shall include the following information regarding each complaint of racial or other biased-based policing lodged against the Police Department or any of its employees in the preceding calendar year:

a. The number of racial or other biased-based policing complaints received;

b. The date each racial or other biased-based policing complaint was filed;

c. Actions taken in response to each racial or other biased-based policing complaint;

d. The decision made in disposition of each racial or other biased-based policing complaint;

e. The date each racial or other biased-based policing complaint was closed.

f. Whether all law enforcement officers not exempted by the Kansas Commission on Peace Officers' Standards and Training received the training required by K.S.A. 22-4610 et.seq.

5. Report to the City Manager from time to time regarding its activities, including an annual report to be presented to the City Manager no later than August 1<sup>st</sup> of each year.

6. Review and render advice on such other matters related to racial and other biased-based policing as are assigned to the advisory board by the Chief of Police or City Manager.”

SECTION 5. Section 2.10.040 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“**Membership.** The Wichita Community Advisory Board shall be composed of the members of the City Manager’s Review Board as established by Administrative Regulation 5.2. Composition of the board shall reflect the racial and ethnic community of the City of Wichita.”

SECTION 6. Section 2.10.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“**Terms.** Members of the Wichita Community Advisory Board shall serve four-year terms. There is no limit on the number of terms that an individual may serve on the advisory board. Upon the resignation of any such member, the City Manager shall appoint a new member to serve the unexpired portion of the resigning member’s term.”

SECTION 7. Section 2.10.060 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“**Meetings.** The Board shall meet at least once quarterly.”

SECTION 8. Section 2.10.070 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Decisions and Procedures of the Board.** Recommendations of the Community Advisory Board shall be approved by majority vote of the members present and voting. The Advisory Board may adopt lawful rules, regulations and by-laws, consistent with the provisions of this chapter and Administrative Regulation 5.2, as it deems necessary for its operation.”

SECTION 9. Section 2.10.080 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Training Advisory Board.** a. In addition to the responsibilities set forth in this Chapter, the Community Advisory Board shall appoint three of its members to serve on the Wichita Police Department Training Advisory Board.

b. The Chief of Police shall designate two law enforcement personnel to serve on the Wichita Police Department Training Advisory Board.

c. The purpose of the Training Advisory Board is to recommend and review appropriate training curricula for Wichita Police Department Officers, supervisors and other staff.

d. The Wichita Police Department Training Advisory Board shall meet at least annually and provide a report regarding Wichita Police Department training curriculum to the Chief of Police and the Community Advisory Board.”

SECTION 10. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of June,  
2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf  
Director of Law

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Construction and Maintenance of an off-road Bicycle Trail by Kansas Singletrack Society (KSS) within Air Capital Memorial Park (District IV)

**INITIATED BY:** Department of Park and Recreation

**AGENDA:** New Business

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**Recommendation:** Approve the Trail Construction and Maintenance Agreement and authorize the necessary signatures.

**Background:** The Kansas Singletrack Society (KSS) is a group of mountain bike enthusiasts in the Southern Kansas/Wichita area. KSS is a non-profit organization, affiliated with the International Mountain Biking Association (IBMA) and the Kansas Trails Council. Organized in 2003, KSS has a mission to place and maintain trails within reach of any person wanting to explore the mountain biking experience. KSS has worked with the City and other organizations to create trails at Chapin Park, Camp Horizon, Miller's Meadows and Fall River Lake.

KSS is currently proposing to develop and construct a singletrack, off road bicycle trail within Air Capital Memorial Park, located at 9500 W. Kellogg and shown on attached diagram. This type of trail is an unpaved path that is approximately the width of the bicycle (too narrow for motorized vehicles). It is frequently smooth and flowing, but may also exhibit technical rocky sections and may be criss-crossed with tree roots, providing a challenging ride for mountain bikers.

**Analysis:** This approximately 1.5 mile singletrack trail will be located completely within Air Capital Memorial Park. This trail will be designed, constructed and maintained by the members of the society.

**Financial Considerations:** KSS will provide the funds for these improvements per the Trail Construction and Maintenance Agreement. No City funds will be used for these improvements.

**Goal Impact:** The construction of this trail will enhance Quality of Life for the community and support a Vibrant Neighborhood.

**Legal Considerations:** The Law Department has approved the Trail Construction and Maintenance Agreement as to form.

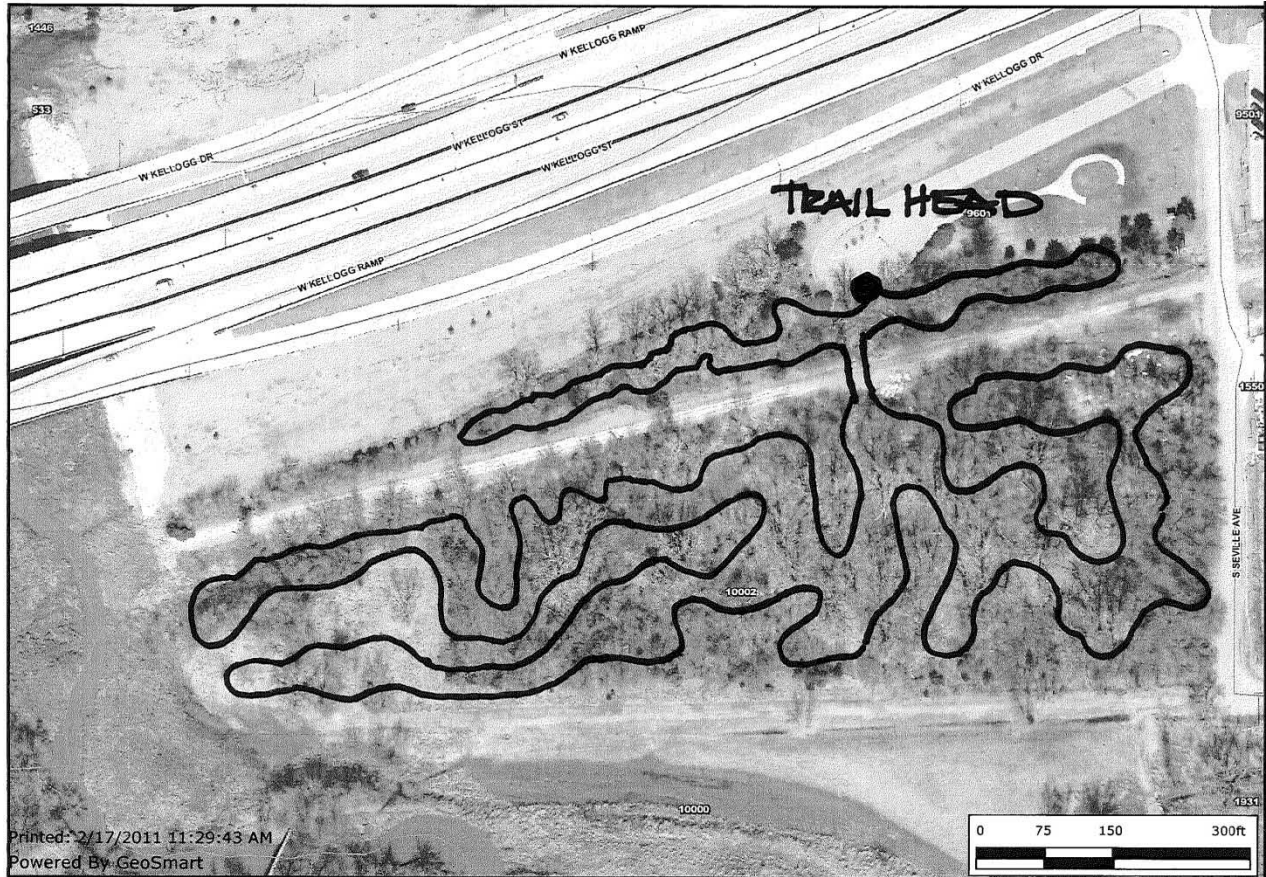
**Recommendation/Action:** It is recommended that the City Council approve the Trail Construction and Maintenance Agreement and authorize all necessary signatures.

**Attachments:** Proposed Trail Layout, Trail Construction and Maintenance Agreement.

# PROPOSED WEST SIDE MOUNTAIN BIKE TRAIL APPROXIMATE LENGTH 1.5 MILES



## Air Capital Memorial Park



**TRAIL CONSTRUCTION AND MAINTENANCE AGREEMENT**  
**AIR CAPITAL MEMORIAL PARK**

This Trail Construction and Maintenance Agreement ("Agreement") is made and entered into on \_\_\_\_/\_\_\_\_/\_\_\_\_ (the "Effective Date") between the Department of Park and Recreation, City of Wichita, Kansas ("City") and the Kansas Singletrack Society, a Kansas Not for Profit Corporation ("KSS") having a registered office at 123 W. Harvey P.O. Box 728, Wellington, KS 67152.

The parties agree as follows:

1. Grant of Right to Construct and Maintain. The City hereby grants to KSS the right to construct and maintain a single-track, off-road, bicycle trail ("Trail") in accordance with the terms and conditions of this Agreement in the area known as Air Capital Memorial Park, located at 9500 W. Kellogg and depicted on Exhibit A attached to this Agreement ("Property").
2. Construction and Maintenance by KSS. KSS shall construct and maintain the Trail on the Property for use by the general public as may be permitted from time to time by the City.
3. Terms of Agreement. This Agreement shall be for a term of two (2) years commencing on the effective date. Thereafter, this Agreement shall be automatically renewed for successive one-year terms upon the same terms and conditions as contained herein, unless either party shall deliver written notice to the other of its intention not to renew this Agreement not less than ninety (90) days prior to the expiration of the current term.
4. Consideration. As consideration for the rights to use the Property granted herein,
  - a. KSS Shall:
    - i. Design, construct, and maintain the Trail suitable for reasonably skilled, adult cyclists who are physically able to ride off-road bicycles on single track or technical features;
    - ii. Submit a schedule of events the first of each year outline the number of events, dates and times of those events.
    - iii. Obtain written approval from the City before any work is Performed;
    - iv. Provide an annual report to the City on the number of volunteer hours worked on the trail, general conditions of the trail, a year summary of maintenance activities and any future improvement plans to the area; and,
    - v. Comply with all applicable federal, state, and local laws, regulations and ordinances.



vi. Coordinate with the City on development of general rules of usage for the trail.

b. The City shall:

- i. Maintain the Property outside the confines of the Trail;
- ii. Involve the KSS in the City's planning and maintenance of Trail;
- iii. Coordinate Trail concerns with the KSS; and,
- iv. Be responsible for any and all signage or notices regarding the Trail.

5. Trail Use.

- a. The Property will be open to the public in accordance with normal facility schedules of the City and the Park Rules and Regulations as set forth in Chapter 9.03 of the Code of the City of Wichita, Kansas.
- b. The City will not permit motor vehicles, such as motorcycles, all terrain vehicles (ATV) or any other vehicle or device which will cause damage to the surface of the Trail to be allowed on the Trail
- c. KSS shall have priority rights to schedule the Property for organized rides if KSS coordinates such activities with the City.

6. Improvements to the Property. Other than the Trail, KSS shall construct no improvements on the Property without the prior written consent of the City. Any permanent improvements made to the trail including storage buildings, shelters, etc become property of the City upon termination of the Agreement.

7. Other Park Improvements. The City may wish to develop or construct other improvements on the Property and shall notify KSS prior to the construction of any such improvements that may affect the Trail. The City shall make every reasonable effort to construct other improvements on the Property at a time and in a manner so as not to interfere with KSS use of the Trail, provided that such efforts shall not cause the City to incur additional cost or expense.

8. Rules, Regulations and Ordinances. KSS agrees to comply with all rules, regulations and ordinances of the City generally applicable to the public and agrees to comply with the Park Rules and Regulations as set forth in Chapter 9.03 of the Code of the City of Wichita, Kansas.

9. Indemnity. KSS shall indemnify and hold the City of Wichita harmless from and against any and all claims of any kind or character for injuries and damages to persons and

property arising out of or in connection with the construction or maintenance of the Trail by KSS, its agents, invitees, members, officers or directors that is not caused by the City's negligence, during the term of this Agreement or any renewal term. The parties shall notify the other party as soon as practicable of any claim made or litigation threatened or instituted which in any way directly or indirectly contingently or otherwise affects or might affect KSS. KSS shall have the right to compromise and participate in the defense of the same to the extent of its own interest.

10. Insurance. KSS shall acquire, at its own cost, general liability insurance in an amount not less than the maximum liability of a governmental entity for claims arising out of a single occurrence as provided by the Kansas Tort Claims Act or other similar future law (currently \$500,000 per occurrence). The City of Wichita shall be named as an additional insured under said policy and such policy shall properly protect and indemnify the City in amounts not less than aforesaid. The issuer may not cancel the insurance thereof without at least thirty 30 days advance written notice to the City. Such policies or copies or certificates thereof shall be furnished to the City upon request.
11. Signs. No permanent signage, notice, advertisements, picture, or other inscriptions of any kind shall be put in or on any part of the property by KSS without the prior written consent of the City. KSS will be allowed to use special event or promotional banners that can be temporary placed for use during special events or activities only and but must be removed when the event is done.
12. Non-Discrimination. KSS shall comply with all applicable requirements of the City of Wichita's Revised Non-Discrimination and Equal Employment/Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.
13. Default. KSS's failure to perform any duty or obligation contained herein and KSS's failure to cure such failure within twenty (20) days after the City has delivered written notice to KSS identifying such default; or within such additional period, if any, as may be reasonably required to cure any such default if it is of such a nature that it cannot be cured within said twenty (20) day period because of a cause beyond the control of KSS, shall be deemed to be a default under this Agreement. If a default exists, the City may terminate this Agreement at any time by giving KSS written notice of intention to terminate this Agreement on a date specified therein, which date shall not be earlier than ten (10) days after said notice is given. If all defaults have not been cured on the date so specified, KSS's right to possession of the Property as provided herein and all rights under this Agreement shall be terminated.
14. Surrender of Possession. KSS shall deliver possession of the Property together with any improvements constructed thereon to the City upon the termination of this Agreement if terminated by KSS. In the event the City terminates this Agreement or exercises its option not to renew this Agreement upon any anniversary date for reasons other than provided in Section 13, KSS may at no cost to the City remove from the Property any and all improvements not of a permanent nature that may have been made subject to KSS

repairing any damage to the Property caused by such removal and provided that said improvements are removed within six months of receipt of written notice of termination of the Agreement.

15. Notices

- a. Any formal notice required or allowed hereunder shall be deemed sufficiently given if personally delivered sent by registered or certified mail return receipt requested or sent via telefacsimile, to the party to whom said notice is to be given. Notices sent by registered or certified mail return receipt requested shall be deemed to have been served 72 hours after the date said notice is postmarked to the addressee postage prepaid Notices sent by telefacsimile shall be deemed to have been served on the day sent and if illegible shall at the receiving party request be resent until the receiving party receives a legible telefacsimile.
- b. Until changed by written notice given by either party to the other the addresses of the parties shall be as follows:

Department of Park and Recreation,  
City of Wichita, Kansas  
11<sup>th</sup> Floor City Hall  
455 N Main  
Wichita, Kansas 67202  
Fax 316-858-7767

Kansas Single Track Society  
c/o Kenneth L. Cooper, Jr.  
123 W. Harvey PO Box 728,  
Wellington, Kansas 67152

16. Miscellaneous

- a. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof There are no verbal understandings agreements representations or warranties between the parties that are not expressly set forth herein This Agreement supersedes all prior agreements and understandings between the parties, both written and oral.
- b. This Agreement may not be amended, modified, altered or changed in any respect except in writing signed by the parties hereto.
- c. The parties acknowledge that each party and their counsel have had the opportunity to review and negotiate the terms and conditions of this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.
- d. The descriptive headings used herein are for the convenience of the parties only and shall not be used in the construction of this Agreement.

- e. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
- f. In the event any covenant condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provisions shall in no way affect any other covenant, condition or provision contained herein.

[Signature Page to Follow]

**Agreed to as of the Effective Date by:**

Not for Signature Not for Signature  
Robert (Bobby) Smith, President KSS

\_\_\_\_\_  
Date

\_\_\_\_\_  
Douglas R. Kupper, Director  
City of Wichita, Park & Recreation Dept.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert Layton, City Manager  
City of Wichita

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
Gary Rebenstorf, Director of Law and  
City Attorney

\_\_\_\_\_  
Karen Sublett, City Clerk

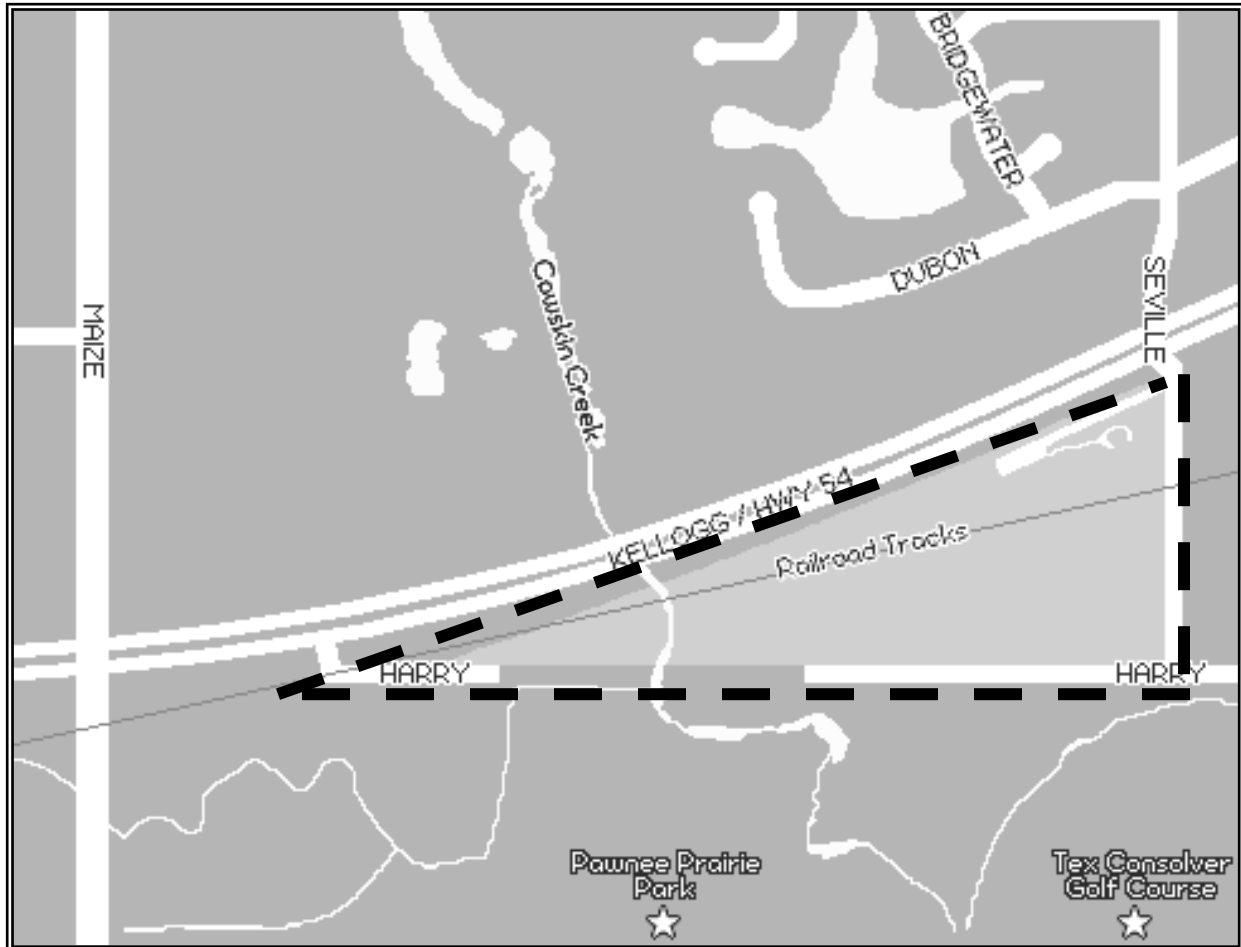
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Date

## Exhibit A

Address: 9500 W. Kellogg, Wichita, Kansas

Acres: 9.55



**SUBJECT:** CON2012-00011 Conditional Use to permit “wrecking and salvage” on property located midway on the north side of East 8<sup>th</sup> Street, between North Mosley Avenue and North Washington Avenue. (District VI)

**AGENDA:** Planning (Non-consent)

**MAPD Staff Recommendations:** Planning staff recommends approval subject to the development standards listed below.

**BACKGROUND:** The applicant is seeking Conditional Use approval to permit “wrecking and salvage” on two platted lots (Lots 54 and 56) containing .23 acre located on the north side of East 8<sup>th</sup> Street, approximately 114 feet east of North Mosley Avenue (854 East 8<sup>th</sup> Street). The subject property is zoned LI Limited Industrial (“LI”), and is developed with a 1,104 square-foot residential type structure built in 1920 (CAMA file data). The structure predated adoption of the first Wichita zoning code (1921). The LI district does not permit residential uses. It is planning staff’s understanding the structure is not used as a residence. (It is not clear if the existing structure meets Building Code standards. If the applicant has not previously addressed that issue, he may want to check with the Office of Central Inspection in the future.) The applicant indicates that the property has been used to store repossessed vehicles for many years; and the application under consideration is a natural expansion of his business. Inspection of the site from the street reveals three or four potentially non-operable vehicles located within the fenced-in area of the applicant’s property. If the vehicles are inoperable, these vehicles by themselves would trigger the need for Conditional Use approval for wrecking and salvage even without the repossession business. The applicant indicates he might have as many as 15 vehicles on-site, but was not able to indicate how long a repossessed vehicle might remain on the site.

The application area has sixty feet of frontage on East 8<sup>th</sup> Street with one driveway located east of the site’s principal structure providing access to the east side and rear of the property. The applicant’s site plan seems to indicate the application area has two driveways; however, the Geozone aerial shows the western driveway to be located on the lot (Lot 52, owned by DAV Thrift Stores Inc.) located west of the applicant’s lots. The site is fenced with an estimated six-foot tall chain-link fence that has sheet metal attached to some portions of the fencing. The western “tree line” depicted on the applicant’s site plan is located approximately sixty feet (or two lots) west of the application area. There is an existing tree line located along the applicant’s eastern property line, as shown on the applicant’s site plan.

While the applicant’s site plan is very detailed, it appears to not include a line delineating the exact boundary of the applicant’s property. A revised site plan clearly showing the boundary of the applicant’s property, particularly along the west side, would be helpful.

The applicant’s two lots are located mid-block, and are two of nine lots that run north and south (fronting 8<sup>th</sup> Street) and back onto the side of other LI zoned lots located north of the application area that run east to west (with frontage on Mosley Avenue (west) and Washington Avenue (east)).

Except for the applicant’s property, the other lots located immediately east and west of the application area and fronting 8<sup>th</sup> Street, are vacant. All land located in all directions from the application area is zoned LI; some of which is developed with warehouse or commercial type buildings and uses or is vacant.

A review of the an aerial of the properties located in the larger area reveals a significant amount of outdoor storage, not necessarily wrecked and/or salvaged vehicles, such as at 918 North Washington (located east of Washington, north of 8<sup>th</sup> Street) and 834 and 832 North Washington (located east of Washington, south of 8<sup>th</sup> Street). One of the distinctions between the applicant and the previously noted properties is the latter noted properties have effective screening while the applicant does not. Interstate Wrecking Service is located at the northeast corner of Mosley and East 9<sup>th</sup> Street and a Conditional Use (CON2011-32) that permits a vehicle salvage yard was approved for property located north of 10<sup>th</sup> Street and east of Mead.

One call received by staff from a neighboring property owner indicated that it has been necessary for them, on multiple occasions, to pay for the removal of items illegally dumped on their property. The applicant has indicated to staff that he too, has had a similar experience. Another caller that staff is aware of was opposed on the basis that the proposed use does not fit in with existing uses and they are trying to clean-up the area.

A “wrecking/salvage yard” is defined by the *Wichita-Sedgwick County Unified Zoning Code* (“UZC”) as a lot, land or structure, or part thereof, used for the collecting, dismantling, storing and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk,



or discarded materials; and/or for the sale of parts thereof. Typical uses include motor vehicle salvage yards and junkyards (Article II, Section II-B.14.r). The (“UZC”) permits “wrecking/salvage yard” in the LI district only with Conditional Use approval, subject to supplementary use regulation D.6.e.

Supplementary use regulation D.6.e states that wrecking and salvage yards may be approved in the LI district provided: 1) the use does not abut an arterial street, expressway or freeway; in the opinion of the Planning Commission; 2) the use will not adversely affect the character of the neighborhood; and 3) the use is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence.

A “vehicle storage yard” is defined by the UZC (Article II, Section II-B.14.j) as the keeping outside of an enclosed building for more than 72 consecutive hours of one or more Motor Vehicles (except “inoperable vehicles”), boats, trailers or unoccupied recreational vehicles. The term vehicle storage yard does not include “wrecking/salvage yard.” Vehicle storage yards are permitted by right in the LI district.

Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. In addition to the uses permitted by right in the LI district, vehicle wrecking and salvage is the only additional use permitted by this Conditional Use. The receipt, sorting, cutting, baling, recycling, processing, storing or resale of recyclable material (such as metal, glass, plastic or paper and as defined in Sec. II-B.11.e) or white goods, appliances, metal (not associated with a vehicle), steel, rags, non-vehicular machinery, aluminum, junk or similar materials is prohibited. The wrecking and salvage of vehicles shall comply with applicable sections of the “Wichita-Sedgwick County Unified Zoning Code” (“UZC”) and UZC, Article II, Section II-B.14.r.
2. Screening walls shall comply with Sec. IV-B.3.h, except that the use of the large rectangular concrete blocks as fencing material is prohibited. All repossessed vehicles or vehicles being wrecked or salvaged shall be parked or stored inside the code required screening wall or fence.
3. In addition to the applicable regulations contained in the UZC, the site shall be developed, operated and maintained in compliance with the approved site plan, and with all applicable local, state or federal regulations, and/or permit or licensing requirements.
4. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection. Any material stored on site that is related to the operation of the wrecking and salvage yard shall not be visible from ground level view.
6. Prior to the beginning of wrecking and salvage operations, a revised site plan depicting the western property line and any other identified items necessary to guide the use of, and to effectively enforce the development standards of, this Conditional Use shall be submitted for consideration for approval.
7. Storage of all of vehicles or their salvaged parts waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Health to prevent rodent harborage and breeding.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents and other vermin.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.

10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Health and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Health.
12. Notification shall be given to Environmental Health of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Health. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Health.
13. The applicant shall implement a drainage plan approved by the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
14. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.
16. All conditions of approval must be completed within one year of final approval; otherwise the Conditional Use shall be ruled null and void.

**Analysis:** At the District Advisory Board (DAB) VI meeting held on April 18, 2012, the DAB voted unanimously (7-0) to recommend denial. Comments made at the DAB meeting included: the size of the property is too small for a salvage operation; environmental and safety concerns with the potential for automotive chemical runoff onto the ground and street; opposition from neighboring property owners and the difficulty in enforcing surfacing requirements for automobile parking, storage or salvage activities.

On April 19, 2012, the Metropolitan Area Planning Commission (MAPC) reviewed the application and recommended denial by a vote of 9-1. The action of the MAPC is final unless there is an appeal by the applicant or a protest is filed by an affected property owner. In the case, the applicant appealed the MAPC denial, triggering the need for City Council consideration of the request and there were valid protests filed by neighboring property owners. Neighboring property owners spoke in opposition and cited concerns that the proposed use would negatively impact area property values; encourage illegal dumping on vacant lots and there were efforts being made to improve the physical appearance of properties in the larger neighborhood. In short, those speaking against the request stated the use was not consistent with most existing uses in the immediate area and was not in the best long range interest of the neighborhood's efforts to protect and enhance property values.

In the case of a Conditional Use the action of the MAPC is final unless there is an appeal. In this instance, the applicant's attorney provided staff with an e-mail stating the applicant wished to appeal the decision of the MAPC.

There have been two protest petitions filed with the City Clerk that equal a 61.71 percent protest, which triggers a three-fourths majority vote of the City Council to approve the request.

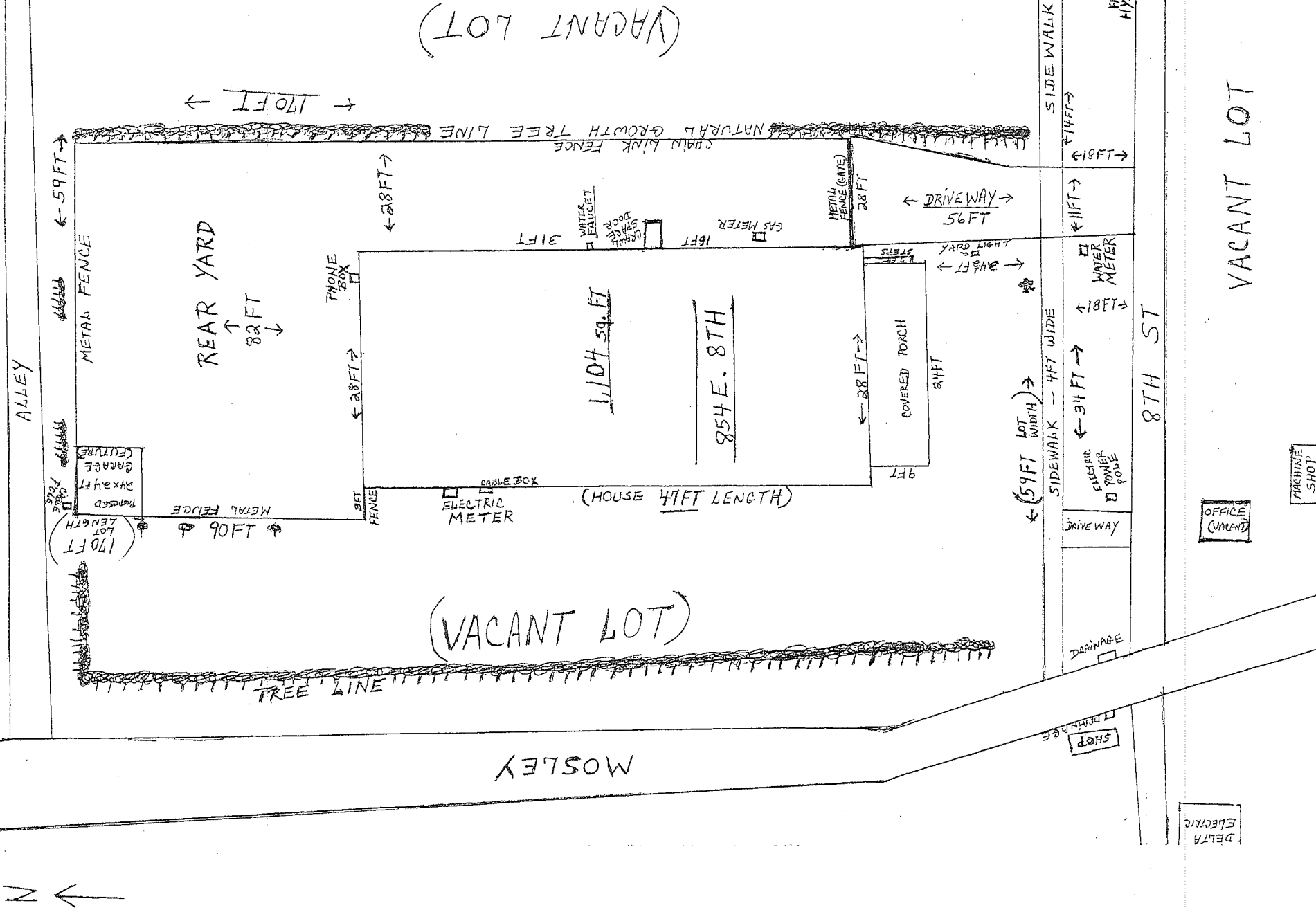
**Financial Considerations:** Approval of the request will not create any atypical financial considerations to the City.

**Legal Considerations:** If the request is approved an appropriate resolution will be prepared at a later date for review by the Law Department.

**Recommendation/Actions:** 1) Adopt the findings of the MAPC and deny the request; (simple majority vote); 2) approve the request subject to the recommended conditions of approval (three-fourths majority vote required) or 3) return the application to the MAPC for reconsideration (two-thirds majority vote required).

**Attachments:** Site plan, MAPC minutes, DAB minutes, protest map and letter from Henry Helgerson.

COMMERCIAL BUILDING (DAV)



## EXCERPT MINUTES OF THE APRIL 19, 2012 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

**Case No.: CON2012-11** – Herlyne Hatcher Living Revocable Trust/Lorenzo S. Atkinson request a City Conditional Use for a wrecking and salvage yard on property described as:

Lots 54 and 56, Eagle now 8th Street, Supplement to Jones 1st Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is seeking Conditional Use approval to permit “wrecking and salvage” on two platted lots (Lots 54 and 56) containing .23 acre located on the north side of East 8<sup>th</sup> Street, approximately 114 feet east of North Mosley Avenue (854 East 8<sup>th</sup> Street). The subject property is zoned LI Limited Industrial (“LI”), and is developed with a 1,104 square-foot residential type structure built in 1920 (CAMA file data). The structure predated adoption of the first Wichita zoning code (1921). The LI district does not permit residential uses. It is planning staff’s understanding the structure is not used as a residence. (It is not clear if the existing structure meets Building Code standards. If the applicant has not previously addressed that issue, he may want to check with the Office of Central Inspection in the future.) The applicant indicates that the property has been used to store repossessed vehicles for many years; and the application under consideration is a natural expansion of his business. Inspection of the site from the street reveals three or four potentially non-operable vehicles located within the fenced-in area of the applicant’s property. If the vehicles are inoperable, these vehicles by themselves would trigger the need for Conditional Use approval for wrecking and salvage even without the repossession business. The applicant indicates he might have as many as 15 vehicles on-site, but was not able to indicate how long a repossessed vehicle might remain on the site.

The application area has sixty feet of frontage on East 8<sup>th</sup> Street with one driveway located east of the site’s principal structure providing access to the east side and rear of the property. The applicant’s site plan seems to indicate the application area has two driveways; however, the Geozone aerial shows the western driveway to be located on the lot (Lot 52, owned by DAV Thrift Stores Inc.) located west of the applicant’s lots. The site is fenced with an estimated six-foot tall chain-link fence that has sheet metal attached to some portions of the fencing. The western “tree line” depicted on the applicant’s site plan is located approximately sixty feet (or two lots) west of the application area. There is an existing tree line located along the applicant’s eastern property line, as shown on the applicant’s site plan.

While the applicant’s site plan is very detailed, it appears to not include a line delineating the exact boundary of the applicant’s property. A revised site plan clearly showing the boundary of the applicant’s property, particularly along the west side, would be helpful.

The applicant’s two lots are located mid-block, and are two of nine lots that run north and south (fronting 8<sup>th</sup> Street) and back onto the side of other LI zoned lots located north of the application area that run east to west (with frontage on Mosley Avenue (west) and Washington Avenue (east)).

Except for the applicant’s property, the other lots located immediately east and west of the application area and fronting 8<sup>th</sup> Street, are vacant. All land located in all directions from the application area is zoned LI; some of which is developed with warehouse or commercial type buildings and uses or is vacant.

A review of the an aerial of the properties located in the larger area reveals a significant amount of outdoor storage, not necessarily wrecked and/or salvaged vehicles, such as at 918 North Washington (located east of Washington, north of 8<sup>th</sup> Street) and 834 and 832 North Washington (located east of

Washington, south of 8<sup>th</sup> Street). One of the distinctions between the applicant and the previously noted properties is the latter noted properties have effective screening while the applicant does not. Interstate Wrecking Service is located at the northeast corner of Mosley and East 9<sup>th</sup> Street and a Conditional Use (CON2011-32) that permits a vehicle salvage yard was approved for property located north of 10<sup>th</sup> Street and east of Mead.

One call received by staff from a neighboring property owner indicated that it has been necessary for them, on multiple occasions, to pay for the removal of items illegally dumped on their property. The applicant has indicated to staff that he too, has had a similar experience. Another caller that staff is aware of was opposed on the basis that the proposed use does not fit in with existing uses and they are trying to clean-up the area.

A “wrecking/salvage yard” is defined by the *Wichita-Sedgwick County Unified Zoning Code* (“UZC”) as a lot, land or structure, or part thereof, used for the collecting, dismantling, storing and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk, or discarded materials; and/or for the sale of parts thereof. Typical uses include motor vehicle salvage yards and junkyards (Article II, Section II-B.14.r). The (“UZC”) permits “wrecking/salvage yard” in the LI district only with Conditional Use approval, subject to supplementary use regulation D.6.e. Supplementary use regulation D.6.e states that wrecking and salvage yards may be approved in the LI district provided: 1) the use does not abut an arterial street, expressway or freeway; in the opinion of the Planning Commission; 2) the use will not adversely affect the character of the neighborhood; and 3) the use is enclosed by a fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence.

A “vehicle storage yard” is defined by the UZC (Article II, Section II-B.14.j) as the keeping outside of an enclosed building for more than 72 consecutive hours of one or more Motor Vehicles (except “inoperable vehicles”), boats, trailers or unoccupied recreational vehicles. The term vehicle storage yard does not include “wrecking/salvage yard.” Vehicle storage yards are permitted by right in the LI district.

**CASE HISTORY:** The property is platted as Lots 54 and 56, Eagle, now 8<sup>th</sup> Street Supplement to Jones 1<sup>st</sup> Addition, recorded in 1883. The property has probably been zoned Light or Limited Industrial since zoning was established by the City of Wichita in 1921. The 1937 zoning map depicted the site as being Light Industrial.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LI Limited Industrial; warehouse / office
SOUTH:	LI Limited Industrial; vacant building / vacant
EAST:	LI Limited Industrial; vacant
WEST:	LI Limited Industrial; vacant

**PUBLIC SERVICES:** The property has access to municipal services. 8<sup>th</sup> Street has 75 feet of right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map indicates this site is appropriate for “employment/industry center.” The employment/industry center encompasses areas with uses that constitute centers or concentrations of employment or an industrial, manufacturing, service, or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. In addition to the uses permitted by right in the LI district, vehicle wrecking and salvage is the only additional use permitted by this Conditional Use. The receipt, sorting, cutting, baling, recycling, processing, storing or resale of recyclable material (such as metal, glass, plastic or paper and as defined in Sec. II-B.11.e) or white goods, appliances, metal (not associated with a vehicle), steel, rags, non-vehicular machinery, aluminum, junk or similar materials is prohibited. The wrecking and salvage of vehicles shall comply with applicable sections of the "Wichita-Sedgwick County Unified Zoning Code" ("UZC") and UZC, Article II, Section II-B.14.r.
2. Screening walls shall comply with Sec. IV-B.3.h, except that the use of the large rectangular concrete blocks as fencing material is prohibited. All repossessed vehicles or vehicles being wrecked or salvaged shall be parked or stored inside the code required screening wall or fence.
3. In addition to the applicable regulations contained in the UZC, the site shall be developed, operated and maintained in compliance with the approved site plan, and with all applicable local, state or federal regulations, and/or permit or licensing requirements.
4. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection. Any material stored on site that is related to the operation of the wrecking and salvage yard shall not be visible from ground level view.
6. Prior to the beginning of wrecking and salvage operations, a revised site plan depicting the western property line and any other identified items necessary to guide the use of, and to effectively enforce the development standards of, this Conditional Use shall be submitted for consideration for approval.
7. Storage of all of vehicles or their salvaged parts waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Health to prevent rodent harborage and breeding.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents and other vermin.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Health and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of

groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Health.

12. Notification shall be given to Environmental Health of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Health. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Health.
13. The applicant shall implement a drainage plan approved by the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
14. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.
16. All conditions of approval must be completed within one year of final approval; otherwise the Conditional Use shall be ruled null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The lots located immediately east and west of the application area and fronting 8<sup>th</sup> Street, are vacant. The property to the north is developed with a large building. Part of the land located to the south of the application area is developed with a vacant commercial building while other lots are undeveloped. All land located in all directions from the application area is zoned LI. The area is characterized by heavy commercial, warehouse or wholesale type uses. There is some outside storage located east of Washington north and south of 8<sup>th</sup> Street; however, it is effectively screened from ground level view.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned LI, which permits a wide range of non-residential potentially economically valuable uses. However, the fact that the site is only 60 feet wide, and is developed with a residential type structure (wooden construction, probably with a raised floor with limited weight bearing capacity, no overhead door access, interior walls not placed or designed for heavy commercial or industrial application) as opposed to a commercial type structure, probably limits the property's prospects for full industrial use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed development standards should address anticipated detrimental impacts. By limiting the materials available for wrecking and salvage to vehicles, some of negative aspects of a typical wrecking or recycling operation can be avoided. The requirement to bring the site's screening into compliance will also minimize potential impacts. There are other wrecking services in the general area, such as at the northeast corner of Mosley and 9<sup>th</sup> Street (Interstate Wrecking Service) and north of East 10<sup>th</sup> Street, east of Mead (CON11-32).
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map indicates this site is appropriate for "employment/industry center." The employment/industry center encompasses areas with uses



that constitute centers or concentrations of employment or an industrial, manufacturing, service, or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices.

5. Support or opposition of neighboring property owners: Staff is aware of two callers opposed to the application.
6. Impact of the proposed development on community facilities: None identified.

**DALE MILLER**, Planning Staff presented the Staff Report. He reported that DAB VI recommended denial of the application.

**ALDRICH** asked if staff had received any opposition or support from surrounding property owners.

**MILLER** said he heard from one property owner who was present in opposition to the proposal. He added he may have heard from another nearby property owner in opposition.

**DENNIS** asked about baling vehicles on site, the small size of the property (.23 acres) and screening.

**MILLER** said the applicant indicated he does not need to do baling so that could be included as a prohibition. He said as far as screening is concerned, the applicant will need to put up fencing that meets the minimum screening requirements.

**CHAIRMAN FARNEY** asked about items #5 under the conditions and clarified that the applicant would not be able to stack vehicles.

**MILLER** indicated that was correct and said any materials may not be able to be viewed from ground level from the outside looking in.

**JOHN BARRETT, 1011 W. FIRST AVENUE, GODDARD, KS, ATTORNEY FOR APPLICANTS** noted that he understood the Disabled American Veterans (DAV) Store had concerns regarding mice, vermin, etc., and said that is not a concern at the applicant's location particularly compared to the other lots in the area including the salvage operation north of the DAV building. He reviewed numerous slides of conditions in the neighborhood including stored vehicles, junked cars and trucks, disabled construction equipment, piles of junk, rubbish, old water meters, board, pallet and pipe storage, untrimmed trees, downed fencing and screening or no screening, abandoned buildings, and also noise from helicopters coming and going to Via Christi Hospital, etc. He said this is not a normal salvage operation and that his client does not intend to bale vehicles. He said his client will obtain vehicles and strip them for parts or to make 1 or 2 operational vehicles. He said the applicant then hauls the remaining parts off to normal salvage yards.

**JOHNSON** (Out @3:33 p.m.)

**BARRETT** said this is an industrial neighborhood.

**DENNIS** asked about the requirement for a surface approved by the Office of Central Inspection (OCI). He asked if the applicant was going to pave the surface and mentioned leaking oil and anti-freeze and what needed to be done to protect the environment.

**BARRETT** responded that he was not sure what kind of surface was required and noted that many of the surrounding neighbors did not have pavement. He said it probably wouldn't be feasible for the applicant to pave the area. He said they believe they can provide "operational containment".

**DENNIS** asked about time frame and how long the vehicles are stored. He asked if the applicant was open to a time limit of say from of 60-90 days.

**BARRETT** referred the question to the applicant Mr. Atkinson.

**LORENZO ATKINSON, 2608 N. WACO, APPLICANT** said that was a hard question to answer. He said most vehicles are at the location for 3-4 months. He said he does the work himself with some temporarily help. He said the repossession business is fairly limited to 2-3 banks. He said he does not compete for the repossession business but enjoys building older type cars. He said as far as addressing oil dripping on the ground, he had planned on putting in a rock surface. He said it would be expensive to pave the entire lot.

**DENNIS** commented that they are not bringing in pristine vehicles. He asked about baling, recycling, the resale of recycled materials and the resale of vehicles.

**ATKINSON** said they do not plan on doing baling. He said he sells parts to other salvage yards whose representatives usually stop by his location.

**BARRETT** said they would be open to having baling listed as an excluded use. He added that in effect all of this type of work is recycling.

**HENRY HELGERSON, 601 N. ATHENIAN** said he owns property to the north, west, east and the property referred to as the alley. He said he also owns the warehouse building at 920 N. Mosley. He provided pictures of the area for Commissioner's review and a handout of his statement. He said they have been in business for 75 years setting conventions and trade shows and selling flags. He said he was also present to speak on behalf of Franklin Bergquist, the Chief Executive Officer of the Disabled American Veterans (DAV) Thrift Store at 926 N. Mosley. He said they own all the surrounding land to this site. He added that combined, they have invested hundreds of thousands of dollars in this block and they have dozens of employees. He commented that the area to the east of this neighborhood is blighted and he wishes he could change that. He said people have been buying and rehabbing the warehouses in this area because they are good properties downtown. He said this is a small site that does not meet any of the requirements of the UZC and the location is a fire hazard because it has no second access to the property. He said he understands that the proprietor needs a business but said this is not a suitable site. He said the DAB voted against the proposal for the same items the Planning Commission has raised at this meeting which are environmentally it doesn't make sense, the lot is too small and the neighbors are opposed to it.

**FRANKLIN BERGQUIST, CHIEF EXECUTIVE OFFICER OF THE DISABLED AMERICAN VETERANS (DAV) STORES** said the DAV employees over 70 workers at the warehouse. He said they leave the doors open for cross ventilation. He said the warehouse is across the street from the salvage yard which will be detrimental to their operation. He said since moving to the building they have spent over \$2,000 on mice and rat control and added that the vermin will probably be back. He said people dump furniture in the back of the store and there is nothing they can do about it. He said he believes a salvage yard will create the same type of dumping problem. He also mentioned use of the parking lot to the east which is a narrow lot.

**ALDRICH** asked **MR. BERGQUIST** if he has contacted the Office of Central Inspection regarding conditions of the surrounding properties.

**BERGQUIST** said he has seen City staff in the neighborhood, but he doesn't know who called them.

**ALDRICH** commented that City staff only comes out when they receive complaints so he might want to keep that in mind.

**BARRETT** said he is not sure of the harm so far as rats and vermin are concerned. He said there is a much closer and bigger mess than Mr. Atkinson's property. He suggested that having Mr. Atkinson present and working at the location would be an inducement to keeping the vermin population down. He said there is no way use of this property is going to impact parking for the DAV. He commented that Mr. Helgersen said one area was owned by him; however, it has been treated as an alley for a long time so he can't speak to that. He mentioned possible setback issues if Mr. Helgersen were to build in the area. He concluded by saying that he didn't see how the applicant's operation is going to be any fire hazard to the DAV warehouse.

**DENNIS** mentioned the size of the property (.23 acres) and the fact that there are a number of blighted areas around it. He said he does not understand why the City would want to add to that situation. He also mentioned that he did not agree with item #1 in the Staff Report, the fact that there was no surface definition and no stipulation as to how long items can be stored at the location.

**MOTION:** To deny the application request.

**DENNIS** moved, **ALDRICH** seconded the motion, and it carried (9-1). **WARREN** – No.



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## INTEROFFICE MEMORANDUM

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**TO:** Wichita City Council  
MAPC Members

**FROM:** Kelli Glassman, Neighborhood Assistant, District IV

**SUBJECT:** CON2012-00011

**DATE:** April 19, 2012

On Wednesday, April 18, 2012, the *District Advisory Board (DAB) for Council District 6* considered this request for conditional use for a salvage yard, generally located midway between Mosley Avenue and Washington Avenue, along the north side of East 8th Street North (854 E. 8th St. N.)

The Board expressed the following concerns with this request:

- The size of the property is not adequate for a salvage yard operation
- The proposed use for this site is not consistent with legally conforming zoned properties in the area
- Environmental and safety concerns regarding lack of proper containment of automotive chemical runoff into the ground, street and river
- There has been opposition to this request expressed by neighbors
- There has been difficulty enforcing surfacing requirements for automobiles on the property, so there is concern that additional code requirements regarding salvage yards will not be able to be enforced as intended
- The proposed use for this site will not employ additional people

**DAB members voted 7-0 to recommend denial of the conditional use request.**

Please review this information when this request is considered.



N MEAD AVE

E 8TH ST N

N WASHINGTON AVE

N MOSLEY AVE

73

Case	CON2012-00011
Total Area	221,890sq. ft.
Application Area	9,543 sq. ft.
Street R/W	86,369 sq. ft.
Net Area	125,978 sq. ft.
20% of Net Area	25,196 sq. ft.
Net Protest Area	77,752 sq. ft.
Total % Protesting	61.71%



CALCULATION AREA

PROTEST WITHIN  
CALCULATION AREA

PROTEST OUTSIDE  
CALCULATION AREA

H-19-12 MAPC:  
HANDOUT



ITEM #10

My name is Henry Helgerson. I own Henry Helgerson Company. We set convention and trade shows and sell US and State Flags. We have been in business for 75 years and operate throughout Kansas, into Oklahoma and Missouri.

Two years ago I bought the warehouse at 920 N. Mosley for additional warehouse space and our new offices. Today, I come in opposition to the conditional use application for 854 E. 8th St. for a wrecking and salvage yard. I'm also speaking for Franklin Berquist the chief executive officer of the Disabled American Veterans Thrift Store at 926 N. Mosley. Our two entities own all the surrounding land to this site. Combined, we have invested hundreds of thousands of dollars in this block and we have dozens of employees.

Our opposition is for the following reasons;

- \*Real estate experts have informed us that if this request is granted the value of our property will decrease and will therefore decrease our property taxes.
- \*Upon moving into their building DAV had a major rodent problem because of the lack of sanitary conditions both across the street and at 854 E. 8th. The continued and expanded use of a salvage yard will only increase the problem.
- \*The site had been out of compliance for years with numerous citations. Now the city is legitimizing this behavior and condoning it.
- \*The site does not follow city policy for a demolition and salvage site. The .23 acres is far less land then what is recommended.
- \*Site does not have 2 entrances and exits. If a fire starts in the back of the lot, you'll have to remove blocked cars to get to area.
- \*The site currently does not meet health, safety, environmental standards and building codes.
- \*Visible pollution from Washington, Mosey and Murdock, which is a major arterial to Via Christi.
- \*When Henry Helgerson Company purchased the property we had to remove 44 tires from our property. Both DAV and Helgerson Company regularly pick up trash and debris on our property. Allowing the permit will also increase the illegal dumping.
- \*Infill housing is a term coined for building new housing on vacant lots. There are several examples within two blocks. However, now the city has created a new term "infill wrecking & salvage yard". Imagine that your neighbors starts storing cars that don't run on his/her property. Rather than tell them to clean up the property the City creates a whole new classification-infill wrecking and salvage yard. Just what every neighborhood wants.

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** CUP2012-00008 Amendment to Parcel 4B of the Prairie Pond Plaza Commercial Community Unit Plan DP-273 to permit “vehicle and equipment sales” on property generally located northeast of the intersection of U. S. 54/400 Highway and South 143<sup>rd</sup> Street East. (District II)

**INITIATED BY:** Metropolitan Area Planning Department

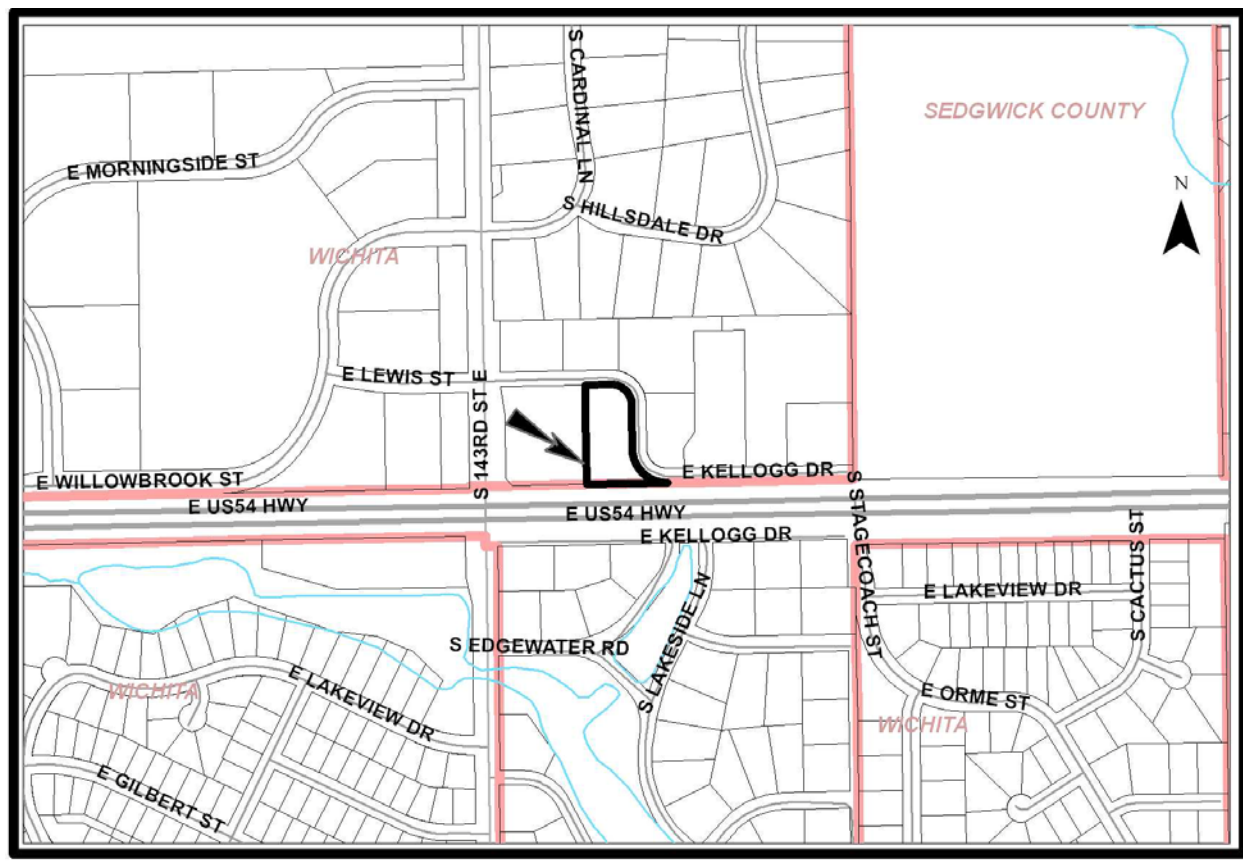
**AGENDA:** Planning (Non-consent)

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**MAPC Recommendations:** The Metropolitan Area Planning Commission recommends approval (7-3) subject to the development standards listed below.

**MAPD Staff Recommendations:** Planning staff recommends approval subject to the development standards listed below.

**DAB Recommendations:** The District Advisory Board recommends denial (7-2).





**BACKGROUND:** The applicant is seeking an amendment to Parcel 4b of the Prairie Pond Plaza Community Unit Plan (CUP) DP-273 to permit “vehicle and equipment sales, outdoor.” Parcel 4b is zoned LC Limited Commercial (“LC”) subject to the development standards contained in DP-273 that includes a prohibition against “vehicle and equipment sales, outdoor” (General Provision 22). Uses permitted in Parcel 4b, as well as the rest of the parcels within DP-273, except Parcel 3, “include uses defined by the limited commercial district, including, but not limited to: banks or financial institutions, assisted living, general retail and drive-thru restaurants. Restaurants that serve liquor can be developed as long as food is the primary service.”

The application area contains 1.40 acres, and is located north of East Kellogg, approximately 389 feet east of North 143<sup>rd</sup> Street East. The subject site is currently undeveloped. Access from 143<sup>rd</sup> Street to the site is provided in two ways: Kellogg Drive and a private drive. Kellogg Drive, at this location, is a frontage road with 50 feet of full street right-of-way that exits 143<sup>rd</sup> Street eastward (354.56 feet north of Kellogg) along the north side of Parcels 4a, that contains the existing Quiktrip, and 4b, the application area, turns south, forming the eastern boundary of the application area, before it turns back east, and runs further east along the north side of Kellogg/U.S. 54/400 where it dead ends approximately 770 feet further east of the application area; at the eastern boundary of DP-273. The second point of access to the site is via a driveway that runs east from 143<sup>rd</sup> Street, just north of the Kellogg/U.S. 54/400 right-of-way through the Quiktrip parking lot, and connects with Kellogg Drive at the southeast corner of the subject site. The site does not have direct access to Kellogg/US 54/400.

The applicant’s site plan depicts one point of access via a drive to East Kellogg Drive located on the east side of the property. The site plan also shows one building located on the northern end of the lot, approximately 45 feet from the site’s northern lot line. A fence is shown encircling the site. The applicant’s agent indicates it is a two-foot high railing designed to prevent ingress and egress to the site except at the proposed driveway. The site plan also shows a 35-foot building setback along the north and east property line but does not indicate building setback lines along the south and western property line. The existing CUP depicts a 35-foot building setback along the south property line and a 15-foot building setback along the west parcel line. Along the western border of the site plan there is a 98-foot by 7.28-foot indentation. If that land is to be excepted from Parcel 4b for use by Parcel 4a, a revised CUP drawing and parcel calculations should be provided if this request is approved.

DP-273 contains 17.11 acres that are divided between eight other parcels and one reserve. Except for one parcel, Parcel 4a, all the parcels within DP-273 are vacant. Parcel 4a, located west of the subject property, is zoned LC subject to the development standards of DP-237, and is developed with a Quiktrip convenience store. (At an earlier time, the application area was part of a larger parcel but has since been divided to create Parcels 4a and 4b.) DP-273 has a row of parcels (Parcels 1A, 1B and 3 with a minimum lot depth of 185 feet) located north of subject site and Kellogg Drive that separates the subject tract from a single-family residential subdivision, the Park East Addition, zoned SF-5 Single-family Residential (“SF-5”), that is located north of DP-273. Land immediately to the east, across Kellogg Drive, is zoned LC, subject to the development standards of DP-273, and is undeveloped. Further east are approximately 78 acres zoned SF-20 Single-family Residential (“SF-20”), developed with a residence. Property to the south, across Kellogg/U.S. 54/400, is zoned SF-20, and is developed with large-lot residences, approximately 26,136 square feet. The closest vehicle sales to the application area that staff is aware of are located one mile to the west, west of 127<sup>th</sup> Street, and one mile to the east, southeast corner of 159<sup>th</sup> Street and U.S. 54/400 (Andover).

“Vehicle and equipment sales, outdoor” are permitted in the LC zoning district only with Conditional Use approval, subject to Supplementary Use Regulations, Article III, Section III.D.6.x and D.6.hh. Supplementary Use Regulation Section III-D.6.x indicates vehicle and equipment sales:

- (1) Locations shall be contiguous to a major street.
- (2) Visual screening of areas adjacent to residential zoning districts shall be provided to protect adjacent properties from light, debris and noise.
- (3) All parking, outdoor storage and display areas shall be paved with concrete, asphalt or asphaltic concrete or any comparable hard surfacing material.



(4) Lighting sources, including base or pedestal, pole and fixture, shall employ cut-off luminaries to minimize light trespass and glare, and shall be mounted at a height not exceeding one-half the distance from the neighboring lot, unless evidence is presented the light source will be aimed or shielded such that the light source is not visible from the neighboring lot. Light sources shall be limited to 15 feet in height within 200 feet of residential zoning districts.

(5) No sound amplification system for projecting music or human voices shall be permitted on any property zoned NO or more intensive if the music and/or voices can be heard within any residential zoning district that is located within a 500-foot radius of the subject site. Outdoor speakers and sound amplification systems are not permitted.

(6) No repair work shall be conducted except in an enclosed building, and no fender or body work is allowed.

(7) No portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be permitted.

With respect to development standards listed above: (1) The subject location is adjacent to a major street (U. S. 54/400). (2) The subject site is separated from SF-5 zoning located to the north by 235 feet of street right-of-way and LC zoned land that is required by General Provision 14 of DP-273 to provide a screening wall as each parcel develops. (3) Recommended condition of approval number 7 below mirrors that requirement. (4) Parcel 4b is located 213 feet from residential zoning to the south, 235 feet from the north; 445 feet to the east and 805 feet to the east; therefore, this development standard does not apply. (Parcel 4b is permitted by General Provision 17 to have light poles up to 25 feet between the street wall line of the building and U.S. Highway 54; otherwise light poles are limited to 20 feet. General Provision 16 requires exterior lighting to be shielded to prevent light disbursement in all directions.) (5) Recommended condition of approval number 8 below mirrors that requirement. (6) Recommended condition of approval number 2 below mirrors that requirement. (7) Recommended condition of approval number 6 below mirrors that requirement.

For those lots zoned LC but located in a CUP, an amendment to the CUP takes the place of Conditional Use approval.

Signage is controlled by CUP General Provision No. 13 which states, in part, signs shall be in accordance with the Sign Code. Monument type signs are permitted along arterial roadways, spaced 150 feet apart. Flashing signs (except for signs showing only time, temperature and other public service messages), rotating or moving signs, signs with moving lights or signs which create illusions of movement are not permitted. No signs shall be allowed on the rear of any buildings. Freestanding monument signs are limited to a maximum height of 20 feet, except for Parcel 4a, which can have one monument type sign with a maximum height of 25 feet along the frontage of U.S. Highway 54. The maximum square footage of sign face allowed in Parcel 4b shall not exceed 80% of lot frontage.

All parcels are required to share similar parking lot lighting elements, and are to be shielded to prevent light disbursement in all directions. Parcel 4b is permitted to have light poles up to 25 feet between the street wall line of the building and U.S. Highway 54; otherwise light poles are limited to 20 feet (General Provisions No. 16 and 17). Exterior audio systems that project sound beyond the boundary of the CUP are prohibited (General Provision No. 20). All building exteriors within the CUP shall share consistent architectural design, earth tone colors and textures, unless waived as outlined in General Provision No. 23. Parcel 4b shall maintain compatibility with either Parcel 4a or Parcels 1a, 1b, 1c and 2 as a group (General Provision No. 23).

**Analysis:** On April 19, 2012, the MAPC reviewed the application. At least eight citizens spoke in opposition to the request. The citizens who spoke in opposition expressed concern with semi-tractor- trailer trucks that park on the U. S. 54/400 frontage road in order to patronize the Quiktrip store or to sleep and they leave their engines running and/or their lights on for extended periods. On one stretch of the frontage road the trucks could be facing north with their lights points straight at the rear of the homes. The noise from trucks left running can be, according to the speakers, heard loud enough at the residences to the north to be bothersome. There was also general displeasure with the fact a screening wall has not been built on the common property line located between the undeveloped LC zoned lots located north of Quiktrip lot and the

application area and the single-family residences located further north. Planning staff is advised that screening and buffer walls are not required to be installed on a given lot until a building permit is pulled for that particular lot. Other concerns mentioned included the fact that traffic backs up on southbound 143<sup>rd</sup> Street lanes from the traffic light at 143<sup>rd</sup> and U. S. 54/400 making it difficult to exit from the neighborhood and the Quiktrip site; and the increased number of accidents at the intersection.

The MAPC voted (7-3) to approve the application subject to the following amended staff recommendations:

1. DP-273 is amended to permit “vehicle and equipment sales, outdoor” on Parcel 4b only. The site shall be developed, operated and maintained in compliance with the approved site plan and all applicable local, state and federal regulations, including, but not limited to the zoning code, landscape ordinance and sign code, unless specifically modified by the development standards of DP-273 or by other approved adjustment or amendment.
2. No automotive service or repair work shall be done on the site unless it is entirely within a building. No body or fender work shall be permitted without first obtaining “GC” General Commercial zoning.
3. If required, the applicant shall submit a revised site plan for review and consideration for approval by the Planning Director, prior to the issuance of a building permit within one-year of approval by the MAPC or the City Council.
4. Landscaping per city code, and as shown on an approved landscape plan, shall be installed prior to obtaining an occupancy permit. The applicant shall submit a landscape plan for consideration of approval by the Planning Director prior to obtaining an occupancy permit.
5. A parking barrier, such as a heavy rail type, shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
6. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, bunting, search lights, balloons or similar devices.
7. There shall be no use of elevated platforms for the display of vehicles. All vehicles for sale or for repair must be on a concrete, asphalt or an approved all weather surface.
8. No outdoor amplification system shall be permitted.
9. No outside storage of salvaged vehicles or vehicles waiting for repair shall be permitted in association with this use. Outside storage of parts, including tires, associated with the “car repair, limited,” operation shall be within a 6-foot solid screened area.
10. Lighting standards shall be as outlined in General Provisions 16 and 17 of DP-273.
11. All trash receptacles, oil containers or any similar type of receptacles for new or used petroleum products or trash shall have solid 6-foot screening around it. The gate shall be of similar materials as the screening.
12. Driveway location shall be reviewed and approved by the Traffic Engineer prior to obtaining a building permit.
13. All improvements shall be completed within one-year of the approval of this amendment by the MAPC or the City Council. No selling of cars shall be allowed until all permits have been acquired and all improvements to the site have been made.
14. Hours of operation are limited to 9:00 a.m. to 8:00 p.m. and the idling of tractor-trailers

associated with the vehicle and equipment sales business is prohibited.

15. Four copies of the approved CUP drawing shall be submitted to MAPD staff within sixty days of final approval.

At the District Advisory Board (DAB) II meeting held on May 7, 2012, the DAB voted to deny (7-2) the request. Several citizens were present at the meeting and commented on the proposed development. The citizens who spoke cited many of the same issues noted at the MAPC hearing.

The Unified Zoning Code permits an action taken by the MAPC regarding a CUP amendment not associated with a zone change to be appealed by an aggrieved person. If an appeal is filed, then the proposed CUP amendment must be forwarded to the City Council for final consideration. In this instance, seventy-eight appeals were filed (see attached map). However, unlike a protest associated with a zone change that triggers a three-fourths majority vote by City Council to approve the request, an appeal of an amendment to a CUP can be approved by a simple majority vote.

**Financial Considerations:** Approval of the request will not create any atypical financial considerations to the City.

**Legal Considerations:** The request has been reviewed by legal staff. There are not any ordinances or resolutions associated with this application.

**Recommendation/Actions:**

- 1) Adopt the findings of the MAPC and approve the amendment to the CUP to permit vehicle and equipment sales, subject to the MAPC recommended conditions of approval; (simple majority vote);
- 2) deny the request (two-thirds majority vote to override the MAPC recommendation) or 3) return the application to the MAPC for reconsideration (simple majority vote).

**Attachments:** Site plan, CUP drawing, MAPC minutes, DAB minutes, appeals map, GaryAce e-mail, Agrammy e-mail, Dieker e-mail, the moores e-mail, Franco memo.



# COMMUNITY UNIT PLAN

## PRAIRIE POND PLAZA

DP - 273

### GENERAL PROVISIONS (Cont):

CUP 2012-08

DP-273  
Per Admin Adjustment: 03-21-08; 09-30-08  
Per Admin Adjustment: 01-01-05

APPROVED CUP

MAPS 05.06.04 DM

WCC 06.08.04 DM

MAPD 06.04.04

- Prior to issuing building permits, a plan for a pedestrian walk system shall be submitted and approved by the Planning Director. This walk system shall link sidewalks along 143rd and between the proposed buildings as determined necessary by the Planning Director.
- Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
- The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
- All property included within this C.U.P. and zone case shall be plotted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
- Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-273) includes special conditions for development on this property.
- The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department, within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.
- Signs shall be in accordance with the Sign Code of the City of Wichita with the following conditions:
  - As the frontage develops along the arterial roadways, monument type signs shall be spaced a minimum of 150' apart, irrespective of how land is leased or sold.
  - Flashing signs (except for signs showing only time, temperature and other public service messages), rotating or moving signs, signs with moving lights or signs which create illusions of movement are not permitted.
  - Portable and off-site signs are not permitted.
  - Window display signs are limited to 25% of the window area.
  - No signs shall be allowed on the rear of any buildings.
  - All freestanding signs must be monument type and shall have a maximum height of 20 feet, except for Parcels 4a, which can have one monument type sign with a maximum height of 25 feet along the frontage of U.S. Highway 54. The maximum square footage of sign face allowed in Parcels 1a, 1b, 1c, 2, 3, 4a, 4b, 5, & 6 shall not exceed 80% of lot frontage.
- Screening
  - A Masonry Wall (8') high shall be provided along the north property line. A (6') high wall shall be constructed along the east property line. The wall will be constructed as each parcel develops.
- Access Controls shall be as shown on the plan, with the total number of access points being as follows:

143rd St. East: 2 Points of Access

  - Access to U.S. 54 Highway shall be limited to one opening on the east 30 feet of Parcel 6. This shall be a shared opening with the land owner to the east. The owner will agree to dedicate half-street right-of-way for the access drive. There shall be complete access controls on the remaining U.S. 54 Highway frontage.
  - The Kansas Department of Transportation reserves the right to close the crossover median in U.S. 54 Highway at the East line of this C.U.P. at such time as they deem necessary.
  - At such time as the proposed Kellogg Drive is constructed from 143rd St. East and 159th St. East the Kansas Department of Transportation shall have the right to close the 30' access opening along the east line of this C.U.P. from U.S. 54 Highway.
- All exterior lighting shall be shielded to prevent light disbursement in all directions.
- All parcels shall share similar or consistent parking lot lighting elements (i.e., fixtures, poles, and lamps, and etc.).
  - Limited height of light poles to 14 feet within 100 feet of abutting residential-zoned property, and 20 feet on the remainder of the tract except for Parcels 4a and 4b, which shall be allowed a maximum height of 25 feet between the street wall line of the building and U.S. Highway 54 (Kellogg).
- Utilities shall be installed underground on all parcels.
- Landscape for this site shall be required as follows:
  - Development of all parcels within the C.U.P. shall comply with the Landscape Ordinance of the City of Wichita.
  - A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material. This plan shall be submitted to the Planning Department for their review and approval prior to issuance of a building permit.
  - A financial guarantee for the plant material approved on the landscape plan for that portion of the C.U.P. being developed shall be required prior to issuance of any occupancy permit, if the required landscape has not been planted.
  - The landscape buffer along the northern property line shall be 1.5 times the landscape buffer requirement of the City of Wichita Landscape Ordinance.
- Exterior audio systems that project sound beyond the boundaries of the C.U.P. are prohibited.
- Fire lanes shall be in accordance with the Fire Code of the City of Wichita. No parking shall be allowed in said fire lanes, although they may be used for passenger loading and unloading. The Fire Chief or his designated representative shall review and approve the location and design of all fire lanes. Fire hydrant installation and paved access to all building sites shall be provided for each phase of construction prior to the issuance of building permits.
- Permitted Uses:

Permitted uses within parcels 1a, 1b, 1c, 2, 4a, 4b, 5 and 6, will include some of the uses defined by the limited commercial district, including, but not limited to: banks or financial institutions, assisted living, general retail and drive-thru restaurants. Restaurants that serve liquor can be developed as long as food is the primary service. Parcel 3 uses will be limited to neighborhood retail uses. The north 100 feet of Parcels 1a, 1b, and 2 shall prohibit overhead doors and drive through windows.

The following uses currently permitted or conditionally permitted in the limited commercial district will be eliminated:

  - Group Residence, Limited
  - Group Residence, General
  - Correctional Facility
  - Correctional Placement Resid., limited
  - Correctional Placement Resid., general
  - Group Home, Limited
  - Group Home, General
  - Group Home, Commercial
  - Halfway House, Limited
  - Halfway House, General
  - Halfway House, Commercial
  - Recycling Collection Station, Private
  - Recycling Collection Station, Public
  - Recycling Processing Center
  - Animal Care, General
  - Bed and Breakfast Inn
  - Funeral Home
  - Helistop
  - Kennel, Boarding/Breeding/Training
  - Kennel, Hobby
  - Marine Facility, Recreational
  - Monument Sales
  - Night Club
  - Recreational Vehicle Campground
  - Secondhand Store/Pawn Shop
  - Tavern and Drinking Establishment
  - Asphalt or Concrete Plant, Limited
  - Asphalt or Concrete Plant, General
  - Mining or Quarrying
  - Oil or Gas Drilling
  - Rock Crushing
  - Solid Waste Incinerator
  - Agricultural Research
  - Vehicle & equipment sales, outdoor (as approved by WCC 6/8/2004)
  - Adult entertainment establishments and erotic modeling studios as defined in the City of Wichita Ordinance.
- All building exteriors within the entire C.U.P. shall share a consistent architectural design, earth tone colors, and texture. This provision may be waived provided that all building exteriors within each parcel share a consistent architectural design, color, and texture, and that the landscaping requirements for street yard landscaping and buffer strip trees per General Provision #19(A) be calculated at 1.5 times the minimum ordinance requirements. Compatibility between Parcels 1a, 1b, 1c, and 2 is required. Parcel 4b shall maintain compatibility with either Parcel 4a or Parcels 1a, 1b, 1c, and 2 as a group.
- If multiple ownership is anticipated, an owners association agreement providing for the maintenance of reserves, open space, internal drives, parking areas, drainage improvements and signage etc., shall be filed with the plat.
- The improvement of 143rd St. East to City standards shall be resolved at the time the property is platted.



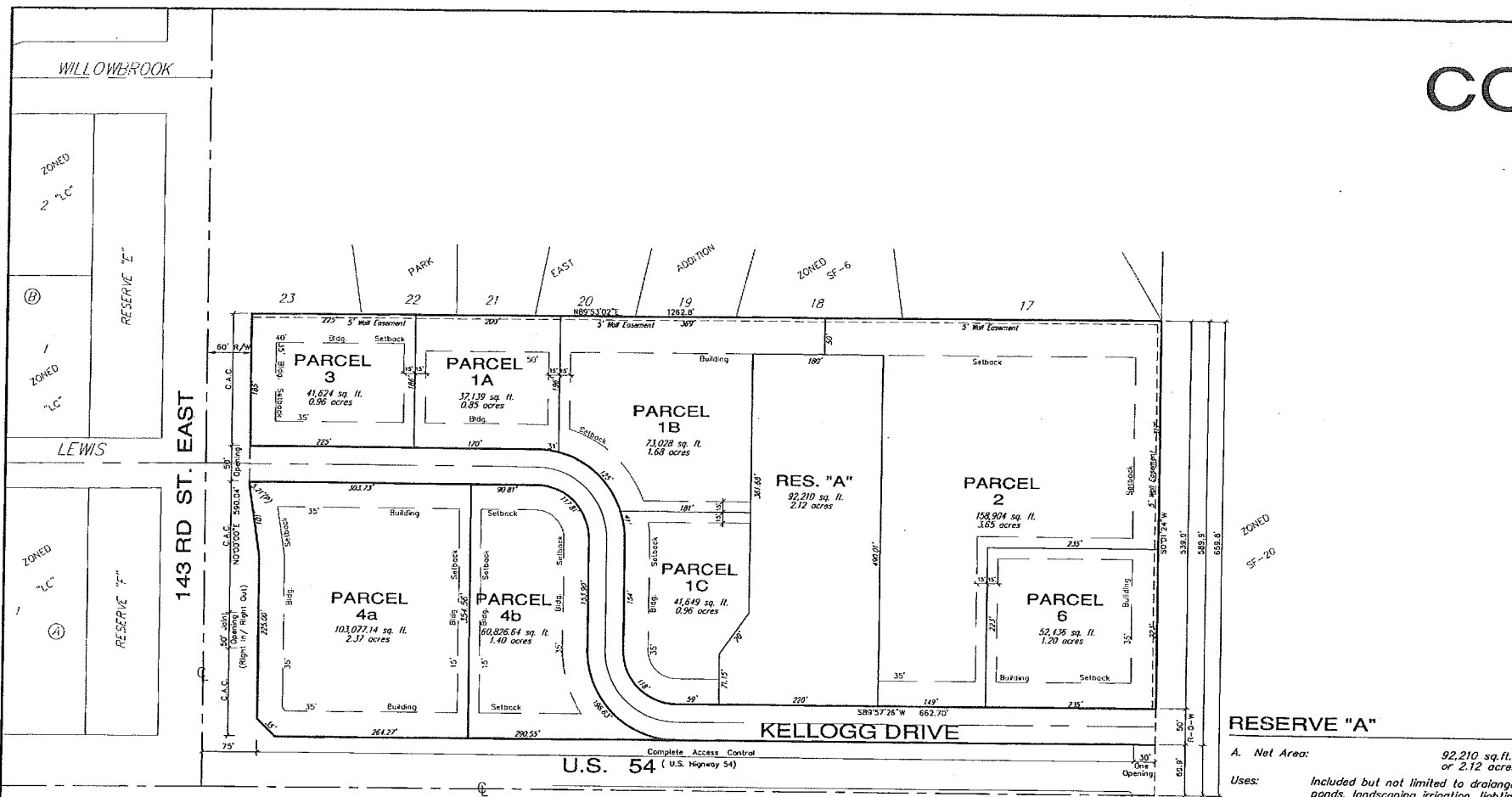
SCALE: 1" = 100'

DP-273

PRAIRIE POND PLAZA  
COMMUNITY UNIT PLAN

BAUGHMAN COMPANY P.A.  
ENGINEERING, SURVEYING, & PLANNING  
318-242-7271 • 318-242-7272 • WICHITA, KANSAS 67211

Revised per Admin Adjust.: September 30, 2008  
Revised per Admin Adjust.: March 21, 2008  
Adjustments due to replat: June 01, 2007  
Adjustments due to plat: December 12, 2004  
Approved: June 8, 2004  
Revised: April 28, 2004  
Drawn: February 03, 2004



### RESERVE "A"

A. Net Area: 92,210 sq. ft. or 2.12 acres  
Uses: Included but not limited to drainage, ponds, landscaping irrigation, lighting, sidewalks, and signage.

### LEGAL DESCRIPTION

A tract in the West Half of the Southwest Quarter (W/2 SW/4) of Section 24, Township 27 South, Range 2 East of the 6th P.M., in Sedgewick County, Kansas, described as follows: BEGINNING at the Southwest corner of the Southwest Quarter (SW/4) of said Section 24; thence North, along the West line, 658.3 feet; thence East 1317.8 feet, more or less, to a point on the East line of the West Half of the Southwest Quarter (W/2 SW/4), which is 659.8 feet North of the Southeast corner of said West Half of the Southwest Quarter (W/2 SW/4); thence South 659.8 feet; thence West, along the South line of said Southwest Quarter, to the POINT OF BEGINNING except that portion taken for street right-of-way.

### GENERAL PROVISIONS:

- Total Land Area: 745,107 sq. ft. or 17.11 acres
- Net Area: 673,741 sq. ft. or 15.47 Acres
- Parking shall be provided in accordance with the Standards of the Unified Zoning Code.
- Setbacks are as indicated on the C.U.P. drawing, or as specified in the parcel descriptions. If contiguous parcels are to be developed under the same ownership, setbacks between those parcels will not be required.
- A Drainage Plan shall be submitted to City Engineering for approval. Required guarantees for drainage shall be provided at the time of platting improvements.
  - The applicant shall agree to share the cost of the following improvements, with details to be determined at time of platting. Access controls: dual southbound left turn lanes from 143rd to Kellogg, dual left turn lanes from Kellogg to 143rd, exclusive southbound right turn lane from 143rd to Kellogg, exclusive westbound right turn lane from Kellogg to 143rd and traffic signal modification at 143rd Street East and Kellogg.
- Transportation Improvements:
  - A site plan shall be required for review and approval by the Planning Director prior to the issuance of any building permits; the site plan shall ensure internal circulation within the parcels and joint use of ingress/egress openings and that private drive openings are not impacted/blocked by the layout of parking stalls or landscaping.
- Access controls shall be in accordance with the Access Management Policy.
- A site plan shall be required for review and approval by the Planning Director prior to the issuance of any building permits; the site plan shall ensure internal circulation within the parcels and joint use of ingress/egress openings and that private drive openings are not impacted/blocked by the layout of parking stalls or landscaping.

### PARCEL 1A

- Net Area: 37,139 sq. ft. or 0.85 acres
- Maximum Building Coverage: 11,142 sq. ft. or 30 percent
- Maximum Gross Floor Area: 12,999 sq. ft.
- Floor Area Ratio: 35 percent
- Maximum Number of Buildings: One (1)
- Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- Setbacks: See Drawing
- Access Points: See Drawing

### PARCEL 1B

- Net Area: 73,028 sq. ft. or 1.68 acres
- Maximum Building Coverage: 21,908 sq. ft. or 30 percent
- Maximum Gross Floor Area: 25,560 sq. ft.
- Floor Area Ratio: 35 percent
- Maximum Number of Buildings: One (1)
- Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- Setbacks: See Drawing
- Access Points: See Drawing

### PARCEL 1C

- Net Area: 41,649 sq. ft. or 0.96 acres
- Maximum Building Coverage: 12,495 sq. ft. or 30 percent
- Maximum Gross Floor Area: 14,577 sq. ft.
- Floor Area Ratio: 35 percent
- Maximum Number of Buildings: One (1)
- Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- Setbacks: See Drawing
- Access Points: See Drawing

### PARCEL 2

- Net Area: 158,904 sq. ft. or 3.65 acres
- Maximum Building Coverage: 47,671 sq. ft. or 30 percent
- Maximum Gross Floor Area: 55,616 sq. ft.
- Floor Area Ratio: 35 percent
- Maximum Number of Buildings: Three (3)
- Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- Setbacks: See Drawing
- Access Points: See Drawing

### PARCEL 3

- Net Area: 41,624 sq. ft. or 0.96 acres
- Maximum Building Coverage: 12,487 sq. ft. or 30 percent
- Maximum Gross Floor Area: 14,568 sq. ft.
- Floor Area Ratio: 35 percent
- Maximum Number of Buildings: One (1)
- Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- Setbacks: See Drawing
- Access Points: See Drawing

### PARCEL 4A

- Net Area: 103,077.14 sq. ft. or 2.37 acres
- Maximum Building Coverage: 30,923 sq. ft. or 30 percent
- Maximum Gross Floor Area: 36,077 sq. ft.
- Floor Area Ratio: 35 percent
- Maximum Number of Buildings: Two (2)
- Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- Setbacks: See Drawing
- Access Points: See Drawing

### PARCEL 4B

- Net Area: 60,826.64 sq. ft. or 1.40 acres
- Maximum Building Coverage: 18,248 sq. ft. or 30 percent
- Maximum Gross Floor Area: 21,289 sq. ft.
- Floor Area Ratio: 35 percent
- Maximum Number of Buildings: One (1)
- Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- Setbacks: See Drawing
- Access Points: See Drawing

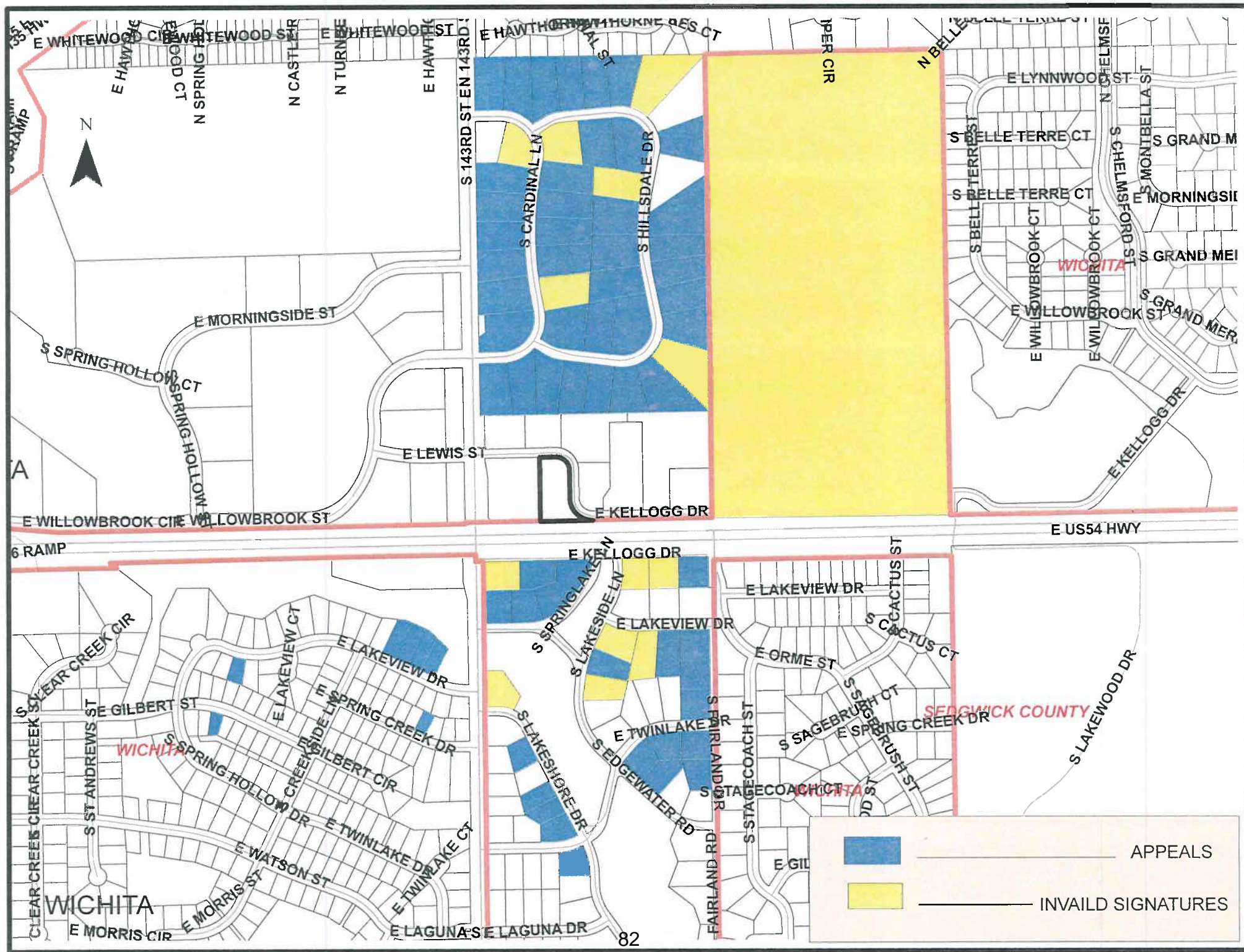
### PARCEL 5

Parcel 5 is deleted.

### PARCEL 6

- Net Area: 52,436 sq. ft. or 1.20 acres
- Maximum Building Coverage: 15,730 sq. ft. or 30 percent
- Maximum Gross Floor Area: 18,352 sq. ft.
- Floor Area Ratio: 35 percent
- Maximum Number of Buildings: One (1)
- Maximum building height to conform to Chapter 28.08 Code of the City of Wichita, but shall be not greater than 35 feet.
- Setbacks: See Drawing
- Access Points: See Drawing





**EXCERPT MINUTES OF THE APRIL 19, 2012 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION HEARING**

**Case No.: CUP2012-08** - Quiktrip West Corporation (Pam Friggel)/Integrity Auto (Ed Murabito, architect) request a CUP amendment to DP-273 Prairie Pond Plaza Community Unit Plan to add vehicle and equipment sales as a permitted use to Parcel 4B on property described as:

Lot 1 except beginning at the Northwest corner, thence East 303.73 feet, thence South 354.56 feet, thence West along the South line 264.27 feet, thence Northwesterly 35.52 feet, thence North along the West line 225 feet, thence Northwesterly 101.12 feet, thence North 5.21 feet to beginning, Block B, Prairie Pond Plaza 2nd Addition to Wichita, Sedgwick County, Kansas

**BACKGROUND:** The applicant is seeking an amendment to Parcel 4b of the Prairie Pond Plaza Community Unit Plan (CUP) DP-273 to permit "vehicle and equipment sales, outdoor." Parcel 4b is zoned LC Limited Commercial ("LC") subject to the development standards contained in DP-273 that includes a prohibition against "vehicle and equipment sales, outdoor" (General Provision 22). Uses permitted in Parcel 4b, as well as the rest of the parcels within DP-273, except Parcel 3, "include uses defined by the limited commercial district, including, but not limited to: banks or financial institutions, assisted living, general retail and drive-thru restaurants. Restaurants that serve liquor can be developed as long as food is the primary service."

The application area contains 1.40 acres, and is located north of East Kellogg, approximately 389 feet east of North 143<sup>rd</sup> Street East. The subject site is currently undeveloped. Access from 143<sup>rd</sup> Street to the site is provided in two ways: Kellogg Drive and a private drive. Kellogg Drive, at this location, is a frontage road with 50 feet of full street right-of-way that exits 143<sup>rd</sup> Street eastward (354.56 feet north of Kellogg) along the north side of Parcels 4a, that contains the existing Quiktrip, and 4b, the application area, turns south, forming the eastern boundary of the application area, before it turns back east, and runs further east along the north side of Kellogg/U.S. 54/400 where it dead ends approximately 770 feet further east of the application area; at the eastern boundary of DP-273. The second point of access to the site is via a driveway that runs east from 143<sup>rd</sup> Street, just north of the Kellogg/U.S. 54/400 right-of-way through the Quiktrip parking lot, and connects with Kellogg Drive at the southeast corner of the subject site. The site does not have direct access to Kellogg/US 54/400.

The applicant's site plan depicts one point of access via a drive to East Kellogg Drive located on the east side of the property. The site plan also shows one building located on the northern end of the lot, approximately 45 feet from the site's northern lot line. A fence is shown encircling the site. The applicant's agent indicates it is a two-foot high railing designed to prevent ingress and egress to the site except at the proposed driveway. The site plan also shows a 35-foot building setback along the north and east property line but does not indicate building setback lines along the south and western property line. The existing CUP depicts a 35-foot building setback along the south property line and a 15-foot building setback along the west parcel line. Along the western border of the site plan there is a 98-foot by 7.28-foot indentation. If that land is to be excepted from Parcel 4b for use by Parcel 4a, a revised CUP drawing and parcel calculations should be provided if this request is approved.

DP-273 contains 17.11 acres that are divided between eight other parcels and one reserve. Except for one parcel, Parcel 4a, all the parcels within DP-273 are vacant. Parcel 4a, located west of the subject property, is zoned LC subject to the development standards of DP-237, and is developed with a Quiktrip convenience store. (At an earlier time, the application area was part of a larger parcel but has since been divided to create Parcels 4a and 4b.) DP-273 has a row of parcels (Parcels 1A, 1B and 3 with a minimum lot depth of 185 feet) located north of subject site and Kellogg Drive that separates the subject tract from

a single-family residential subdivision, the Park East Addition, zoned SF-5 Single-family Residential ("SF-5"), that is located north of DP-273. Land immediately to the east, across Kellogg Drive, is zoned LC, subject to the development standards of DP-273, and is undeveloped. Further east are approximately 78 acres zoned SF-20 Single-family Residential ("SF-20"), developed with a residence. Property to the south, across Kellogg/U.S. 54/400, is zoned SF-20, and is developed with large-lot residences, approximately 26,136 square feet. The closest vehicle sales to the application area that staff is aware of are located one mile to the west, west of 127<sup>th</sup> Street, and one mile to the east, southeast corner of 159<sup>th</sup> Street and U.S. 54/400 (Andover).

"Vehicle and equipment sales, outdoor" are permitted in the LC zoning district only with Conditional Use approval, subject to Supplementary Use Regulations, Article III, Section III.D.6.x and D.6.hh. Supplementary Use Regulation Section III-D.6.x indicates vehicle and equipment sales:

- (1) Locations shall be contiguous to a major street.
- (2) Visual screening of areas adjacent to residential zoning districts shall be provided to protect adjacent properties from light, debris and noise.
- (3) All parking, outdoor storage and display areas shall be paved with concrete, asphalt or asphaltic concrete or any comparable hard surfacing material.
- (4) Lighting sources, including base or pedestal, pole and fixture, shall employ cut-off luminaires to minimize light trespass and glare, and shall be mounted at a height not exceeding one-half the distance from the neighboring lot, unless evidence is presented the light source will be aimed or shielded such that the light source is not visible from the neighboring lot. Light sources shall be limited to 15 feet in height within 200 feet of residential zoning districts.
- (5) No sound amplification system for projecting music or human voices shall be permitted on any property zoned NO or more intensive if the music and/or voices can be heard within any residential zoning district that is located within a 500-foot radius of the subject site. Outdoor speakers and sound amplification systems are not permitted.
- (6) No repair work shall be conducted except in an enclosed building, and no fender or body work is allowed.
- (7) No portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be permitted.

With respect to development standards listed above: (1) The subject location is adjacent to a major street (U. S. 54/400). (2) The subject site is separated from SF-5 zoning located to the north by 235 feet of street right-of-way and LC zoned land that is required by General Provision 14 of DP-273 to provide a screening wall as each parcel develops. (3) Recommended condition of approval number 7 below mirrors that requirement. (4) Parcel 4b is located 213 feet from residential zoning to the south, 235 feet from the north; 445 feet to the east and 805 feet to the east; therefore, this development standard does not apply. (Parcel 4b is permitted by General Provision 17 to have light poles up to 25 feet between the street wall line of the building and U.S. Highway 54; otherwise light poles are limited to 20 feet. General Provision 16 requires exterior lighting to be shielded to prevent light disbursement in all directions.) (5) Recommended condition of approval number 8 below mirrors that requirement. (6) Recommended condition of approval number 2 below mirrors that requirement. (7) Recommended condition of approval number 6 below mirrors that requirement.

For those lots zoned LC but located in a CUP, an amendment to the CUP takes the place of Conditional Use approval.

Signage is controlled by CUP General Provision No. 13 which states, in part, signs shall be in accordance with the Sign Code. Monument type signs are permitted along arterial roadways, spaced 150 feet apart. Flashing signs (except for signs showing only time, temperature and other public service messages),



rotating or moving signs, signs with moving lights or signs which create illusions of movement are not permitted. No signs shall be allowed on the rear of any buildings. Freestanding monument signs are limited to a maximum height of 20 feet, except for Parcel 4a, which can have one monument type sign with a maximum height of 25 feet along the frontage of U.S. Highway 54. The maximum square footage of sign face allowed in Parcel 4b shall not exceed 80% of lot frontage.

All parcels are required to share similar parking lot lighting elements, and are to be shielded to prevent light disbursement in all directions. Parcel 4b is permitted to have light poles up to 25 feet between the street wall line of the building and U.S. Highway 54; otherwise light poles are limited to 20 feet (General Provisions No. 16 and 17). Exterior audio systems that project sound beyond the boundary of the CUP are prohibited (General Provision No. 20). All building exteriors within the CUP shall share consistent architectural design, earth tone colors and textures, unless waived as outlined in General Provision No. 23. Parcel 4b shall maintain compatibility with either Parcel 4a or Parcels 1a, 1b, 1c and 2 as a group (General Provision No. 23).

**CASE HISTORY:** The Prairie Pond Plaza CUP and LC zoning (CUP2003-00075 and ZON2003-65) were approved by the MAPC on May 6, 2004; City Council approval was on June 8, 2004. The Prairie Pond Plaza 2<sup>nd</sup> Addition was recorded in 2007. Case number CUP2008-00036 (September 30, 2008) was an Administrative Adjustment to divide Parcel 1 into three parcels; consolidate Parcels 4 and 5; relocate the alignment of Kellogg Drive; increase the height of lighting to 25 feet on Parcel 4 and increase the sign height to 25 feet on Parcel 4. CUP2008-04 (March 21, 2008) was an Administrative Adjustment to divide Parcel 1 into three parcels; consolidate Parcels 4 and 5; relocate the alignment of Kellogg Drive; increase light height to 25 feet on Parcel 4 and increase sign height to 25 feet on Parcel 4. Additional Administrative Adjustments were completed on December 12, 2004 and June 1, 2007.

**ADJACENT ZONING AND LAND USE:**

NORTH: LC, subject to DP-273, SF-5; vacant, single-family residences  
SOUTH: SF-20; large lot single-family residential (Springdale Country Club Estate)  
EAST: LC, subject to DP-273; vacant  
WEST: LC, subject to DP-273; Quick Trip convenience store

**PUBLIC SERVICES:** Public services are available or are available for extension. 143<sup>rd</sup> Street is designated on the 2030 Transportation Plan map as a two lane arterial, while U. S. 54/400 is shown as a four lane expressway. Traffic counts are not available for 143<sup>rd</sup> Street. In 2005-2006, U. S. 54/400 carried approximately 31,900 vehicles on an average day.

**CONFORMANCE TO PLANS/POLICIES:** Commercial location guideline number six (page 35 of 1999 update of *The Wichita-Sedgwick County Comprehensive Plan*) states that auto sales lots and other types of infrequent purchase or non-neighborhood serving commercial uses are to be guided to areas containing similar uses, and away from neighborhood commercial areas. The 2030 Wichita Functional Land Use Guide Map depicts the subject site, and all the land along the north side of U. S. 54/400, as being appropriate for "regional commercial" uses. Regional commercial uses are defined as major destination areas (centers and corridors) containing concentrations of commercial, office, and personal service uses that have predominately regional market areas and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships and big box retail outlets with a regional draw.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. DP-273 is amended to permit "vehicle and equipment sales, outdoor" on Parcel 4b only. The site shall be developed, operated and maintained in compliance with the approved site plan and all applicable local, state and federal regulations, including, but not limited to the zoning code, landscape ordinance and sign code, unless specifically modified by the development standards of DP-273 or by other approved adjustment or amendment.
2. No automotive service or repair work shall be done on the site unless it is entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
3. If required, the applicant shall submit a revised site plan for review and consideration for approval by the Planning Director, prior to the issuance of a building permit within one-year of approval by the MAPC or the City Council.
4. Landscaping per city code, and as shown on an approved landscape plan, shall be installed prior to obtaining an occupancy permit. The applicant shall submit a landscape plan for consideration of approval by the Planning Director prior to obtaining an occupancy permit.
5. A parking barrier, such as a heavy rail type, shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
6. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, bunting, search lights, balloons or similar devices.
7. There shall be no use of elevated platforms for the display of vehicles. All vehicles for sale or for repair must be on a concrete, asphalt or an approved all weather surface.
8. No outdoor amplification system shall be permitted.
9. No outside storage of salvaged vehicles or vehicles waiting for repair shall be permitted in association with this use. Outside storage of parts, including tires, associated with the "car repair, limited," operation shall be within a 6-foot solid screened area.
10. Lighting standards shall be as outlined in General Provisions 16 and 17 of DP-273.
11. All trash receptacles, oil containers or any similar type of receptacles for new or used petroleum products or trash shall have solid 6-foot screening around it. The gate shall be of similar materials as the screening.
12. Driveway location shall be reviewed and approved by the Traffic Engineer prior to obtaining a building permit.
13. All improvements shall be completed within one-year of the approval of this amendment by the MAPC or the City Council. No selling of cars shall be allowed until all permits have been acquired and all improvements to the site have been made.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The properties immediately located on three sides of the application area are zoned LC, subject to the development standards detailed in CUP

DP-273. All the property located within DP-273 is vacant except for the Quiktrip convenience store located immediately to the west of the subject site. Other vacant parcels located within the CUP are located to the application area's north and east. DP-273 contains 17.11 acres and is positioned at the intersection of South 143<sup>rd</sup> Street East, a two-lane section line road and U. S. Highway 54/400, a divided four-lane expressway. South of U. S. 54/400 is a large lot residential subdivision developed with single-family homes. North of DP-273 is also a large lot single-family residential subdivision, zoned SF-5. East of the site is a large estate of approximately 77 acres zoned SF-20. The segment of U. S. 54/400 located east and west of the application is one of the few areas where single-family lots abut highway right-of-way.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC subject to the development standards contained in DP-273, which includes a prohibition on "vehicle and equipment sales, outdoor." The CUP lists 35 uses that were specifically prohibited when the LC zoning and the CUP zoning overlay were approved in 2004. The LC district permits 66 uses by right. Given the 31 other potential LC uses not prohibited by the CUP, it is probable the site could be put to an economically viable use.
3. Length of time the subject property has remained vacant: DP-273 was approved in 2004 and the property has remained vacant. Staff does not have any indication of how long the property has been on the market since it was zoned LC subject to DP-273 or of the reasonableness of the asking price. It appears Parcel 4b was created in 2008.
4. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed development standards should mitigate anticipated impacts of the proposed amendment. The site is buffered spatially from residentially zoned lots by either intervening LC zoned lots or by U. S. 54/400 right-of-way. The closest residentially zoned lots are located 213 feet away from the subject parcel, across U. S. 54/400. Lots located to the north are 235 feet away.
5. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Presumably denial would represent an economic and opportunity loss to the property owner and/or the prospective user if the request is denied. Approval would give the public another location in which to shop for vehicles.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Commercial location guideline number six (page 35 of 1999 update of *The Wichita-Sedgwick County Comprehensive Plan*) states that auto sales lots and other types of infrequent purchase or non-neighborhood serving commercial uses are to be guided to areas containing similar uses, and away from neighboring commercial areas. The 2030 Wichita Functional Land Use Guide Map depicts the subject site, and all the land along the north side of U. S. 54/400, as being appropriate for "regional commercial" uses. Regional commercial uses are defined as major destination areas (centers and corridors) containing concentrations of commercial, office, and personal service uses that have predominately regional market areas and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships and big box retail outlets with a regional draw.
7. Impact of the proposed development on community facilities: Community facilities are in place or are available for extension.

DALE MILLER, Planning Staff presented the Staff Report.

**ED MURABITO, 412 RIVERVIEW, ARCHITECT** for the proposed project said this will be a "high end" auto sales location operating from 9:00 a.m. -8:00 p.m. with 2 employees and a small office building to handle sales. He said the location will not have the capacity for prepping or maintenance or service of automobiles. He said there will be no loud speakers and that the operation will be very low key. He said there will be 1 entrance to the site 200 feet from any close residential area.

**DENNIS** stated that the operating hours were not listed under the conditions in the Staff Report. He asked if the agent would object to operating hours being added as a requirement.

**MURABITO** said he does not believe that will be a handicap for his client at all.

**GREG FRANCO, 394 HILLSDALE DRIVE** said he lives adjacent to DP-273. He provided Commissioners a handout. He briefly summarized his statement saying that the protective overlay DP-273 was established for this site and the surrounding single-family neighborhood and requested that it stay in force. He said there is an existing traffic problem at this intersection now it will get worse without roadway improvements and the addition of another business. He requested a traffic study before any commercial additions to the area; a storm water runoff study for this particular usage; and no Kellogg entrance, no turn around, and no parking. He said there are other sites available that are more suitable for this type of business. He said part of the problem is that the Quiktrip is located too close to Kellogg causing traffic congestion problems. He also mentioned standing water and mud because of the landscaping east and west on 143<sup>rd</sup> Street. He said he does not agree with the Staff Report that 143<sup>rd</sup> Street is a major roadway. He said you can wait in a traffic line for up to a half hour to go from Kellogg onto 143<sup>rd</sup> Street. He said storm water runoff from one acre of pavement can generate 825,000 gallons of water in a year. He asked how that might impact the subdivisions of Springdale Country Estates, Springdale Lake and Springdale East. He also mentioned possible pollution from oil and grease on the car lot.

**MOTION:** To give the speaker 2 additional minutes

**SHEETS** moved, **FOSTER** seconded the motion, and it carried (10-0)

**FRANCO** said he located 6 areas for sale west of K-96 that would be better suited for vehicle and equipment sales, two of which already have existing buildings and are not adjacent to residential neighborhoods. He concluded by stating that the road improvements that are going to happen in the 2030 Wichita Functional Land Use Guide are a long way from now. He said until that time when traffic is not as congested, he requested that the Commission not allow another business to go into the site.

**LARRY FRUITIGER, 102 SOUTH CARDINAL LANE, PRESIDENT PARKEAST**

**HOMEOWNERS ASSOCIATION** said there are 46 homes in Parkeast which is the area north of the site. He said the homes are large acre lots in a long established area. He said they expressed their concerns about this Community Unit Plan (CUP) in 2004 during the approval process and worked with the developer on the restrictions. He said the restrictions are there for a reason and that is to protect the surrounding neighborhood. He said the neighborhood wants those restrictions to remain in place. He said he has the same issues with the Quiktrip store citing trash, lights, and semi trucks parking along East Kellogg Drive and running all night. He said removing this restriction and allowing vehicle sales will only add to the light issues. In addition, he said trucks unloading vehicles at the site late at night and sitting out there running all night will be another issue. He said when they previously met with the developer of the CUP they understood that there was going to be an 8-foot masonry wall built between the development and the neighborhood before anything was built on the property. He said that is not exactly what has happened. He said now it appears that the wall will happen as the individual lots are developed. He said this site does not have direct access to Kellogg and the intersection is now very

congested and not adequate to handle turning traffic and traffic coming out of Quiktrip. He mentioned the need for a traffic study of the area and added that there are other lots available opposite of Lowe's and several vacant building sites that would be more suitable. He asked the Planning Commission to deny the request.

**DAVID SUTTON, 330 SOUTH CARDINAL LANE** said he lives just north of the property in question. He said he wanted to share his concerns about the issues already identified which he feels are valid points. He mentioned lighting and how this development would add to that problem. He added that headlights from Quiktrip traffic in the early morning and late evening are also a problem. He said access to this business will bring the vehicle lighting even closer to residences. He also mentioned noise pollution with the large semi-trucks idling overnight. He asked that this change in restrictions previously agreed to be denied.

**KENT WEIXELMAN, 122 CARDINAL LANE** said he was on the Parkeast Committee who met in good faith with the owner in 2004 to come up with a consensus between the developer and residents that resulted in the agreement on the current plan. He said this requested update is like an agreement between business partners and after a while if one of the parties discovered a loophole and decided to use it, by most people that would be considered unethical. He asked that the request be denied.

**VERDINA NEWMAN, 340 SOUTH CARDINAL LANE** said she doesn't know if they emphasized clearly enough how intrusive the lighting from cars coming out of Quiktrip can be. She said they come out of the drive to the north because the drive to the west of Quiktrip is too full and too backed up. She said semis sit with their lights on directly to the back of their homes where they like to spend leisure time on their patios in the evenings. She said when they moved there, they thought there was going to be a wall between that property and theirs. She said once the developer split the property and put the Quiktrip to the south, it was decided that the wall didn't need to be there. She said at least 1 semi parks and idles every night. She concluded by stating that it is intrusive to have lights shining in the back of your house all night long.

**FOSTER** asked if the problem was isolated to vehicular lights or from taller lighting at the Quiktrip.

**NEWMAN** said it was isolated to vehicular lights. She mentioned that Quiktrip has done a good job of placing the lights under the pumps so the building is taller than the lights themselves.

**RICK TRAVIS, 250 SOUTH CARDINAL LANE** said they encounter all the same problems such as noise, traffic, trash and people who cut through the neighborhood from Quiktrip. He said he understands that expansion of the highway to 3 lanes is scheduled for at least 5 years, which in reality probably means 10 years. He mentioned opening up access to the frontage road and that Kansas Department of Transportation (KDOT) may have a problem with that. He mentioned the semis that park nearby and run all night long. He said there are 3 to 5 wrecks a week at the location and added that cars stack up and you have to wait through 3 and 4 lights to turn north onto 143<sup>rd</sup> Street in addition to cars trying to turn south onto 143<sup>rd</sup> Street out of Quiktrip. He said the dirt that was along Kellogg which was 4-5 feet tall was a natural barrier to sound, but that was cut down to allow the drainage to work properly. He said the mound of dirt behind Quiktrip, with no grass, no trees and or wall, transfers sound up through the housing development and carries through the entire neighborhood. He said it is terrible. He said they can also hear traffic and noise from the turnpike and the truck driver's air brakes. He said they are trapped between 2 noise barriers. He said they don't need any more development until the City steps up with a traffic plan to solve the traffic problem. He said somehow the agreement got changed and now the walls don't have to be built until people purchase the lots to the north. He said the car lots on South Seneca have walls between them and residential areas so residents don't have to look onto the car lots.

**ALDRICH** asked if Mr. Travis got his gas at Quiktrip?

**TRAVIS** replied no, never.

**JOHN NEWMAN, 340 SOUTH CARDINAL LANE** said he buys his gas at Quiktrip and also picks up all the trash that blows over onto his property. He said the Commissioners have no idea the horrendous amount of traffic on East Lewis. He said it is so loud right in their backyard he can't explain how loud it is. He said semi tractor trailers park along Lewis and leave their motors running all night long. He said he is against putting in a car lot at this location.

**ED MUBARITO** said about 10 years ago he drove through the area with his wife noting that it was a very pleasant enclosed beautifully landscaped loop; however, he mentioned to his wife that Kellogg will be developed at some point in time and that bothered him. He said the uses allowed in the area are very intense including drive thru restaurants and regular restaurants. He said his client has 2 businesses in town at Broadway and Kellogg and Hydraulic and Douglas which he said are unlike some of the establishments on South Broadway and South Seneca where they take in wrecked cars, part them out and throw the parts behind the building. He said vehicle deliveries will be during working hours of 9:00 a.m. – 8:00 p.m. He said this will be very low intensity as far as traffic is concerned. He said it could be a great deal worse if this is not allowed and some of the things that are allowed go onto the site. He said he sympathizes with the traffic, the lights and trucks idling at night, but he said they will not be adding those kinds of problems. He mentioned that Quiktrip does have drainage problems and they have spent time with a drainage engineer to address drainage that comes across their property.

**FOSTER** asked why Quiktrip is listed on the application.

**MUBARITO** explained that his client is purchasing the property from Quiktrip.

**FARNEY** asked where the car haulers will come into to deliver vehicles.

**MUBARITO** said car haulers will use the main entrance.

**WARREN** asked staff to list the types of business that are approved for this lot.

**MILLER** said Parcel 4B and DP-273 uses include uses defined in the LC zoning including but not limited to banks or financial institutions, assisted living, general retail and drive thru restaurants, restaurants that serve liquor as long as food is the primary service.

**WARREN** said he is asking himself if this type of business is going to add more traffic than the types of businesses that are already allowed. He said his experience is that car lots have fairly light traffic. He said; therefore, he will be voting in favor of staff recommendation because he feels this is one of the lightest uses that this property can have and is more beneficial than a number of the types of businesses that are already allowed in this area.

**MOTION:** To approve subject to staff recommendation.

**WARREN** moved, **FARNEY** seconded the motion for discussion purposes.

**DENNIS** suggested adding a condition to limit the hours of operation to 9:00 a.m. – 8:00 p.m. and adding a condition that idling tractor trailers be prohibited on the property.

The motion maker and second agreed to the suggested additions to the motion.

**FOSTER** mentioned compelling information the Commission has received today regarding traffic, car lights and drainage. He said his **motion** would include additional conditions such as a traffic study, drainage plan and to amend the requirements of the CUP to require that the 2 lots to the north meet the screening requirement called for in the CUP.

**CHAIRMAN FARNEY** asked for a second on the motion.

**DIRECTOR SCHLEGEL** asked for clarification of the motion. He said the drainage plan and traffic study would be requirements of the applicant. He said the 2 lots to the north are under separate ownership. He said this applicant would have no way to compel the other owners to provide screening.

**FOSTER** asked about Quiktrip's ownership in the CUP.

**MILLER** said he understands that Quiktrip owns the 2 lots on the south of the CUP. The rest of the CUP is under separate ownership.

**FOSTER** said he would like to amend the motion to require screening along the north side of the 2 southern parcels owned by Quiktrip.

There was further discussion regarding the motion and other issues including the type of screening, a prohibition on parking on the streets, whether the Commission could require Quiktrip to screen if they were not present at the meeting, and whether this was a contingent sale.

**FIRST SUBSTITUTE MOTION** fails due to lack of a second.

**SECOND SUBSTITUTE MOTION:** To deny the application.

**SHEETS** moved, **ALDRICH** seconded the motion, and it failed (3-7). **DENNIS, FARNEY, KLAUSMEYER, MCKAY, MILLER STEVENS, MITCHELL** and **WARREN** – No.

**MOTION:** To approve subject to staff recommendation.

**WARREN** moved, **FARNEY** seconded the motion, and it carried (7-3). **ALDRICH, FOSTER** and **SHEETS** - No.



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**INTEROFFICE  
MEMORANDUM**

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**TO:** MAPC Members  
**FROM:** Antione Sherfield, Neighborhood Assistant, District II  
**SUBJECT:** CUP2012-00008 – Amendment to DP-273 to permit “vehicle and equipment sales, outdoor”.  
**DATE:** May 17, 2012

On Monday, May 7, 2012, the District II Advisory Board considered the request to amend the amendment to DP-273 to permit “vehicle and equipment sales, outdoor” located North of East Kellogg, 389 feet east of North 143<sup>rd</sup> Street East.

The applicant is seeking an amendment to Parcel 4b of the Prairie Pond Plaza Community Unit Plan (CUP) DP-273 to permit “vehicle and equipment sales, outdoor.” Parcel 4b is zoned LC Limited Commercial (“LC”) subject to the development standards contained in DP-273 that includes a prohibition against “vehicle and equipment sales, outdoor” (General Provision 22). Uses permitted in Parcel 4b, as well as the rest of the parcels within DP-273, except Parcel 3, “include uses defined by the limited commercial district, including, but not limited to: banks or financial institutions, assisted living, general retail and drive-thru restaurants. Restaurants that serve liquor can be developed as long as food is the primary service.”

The application area contains 1.40 acres, and is located north of East Kellogg, approximately 389 feet east of North 143<sup>rd</sup> Street East. The subject site is currently undeveloped. Access from 143<sup>rd</sup> Street to the site is provided in two ways: Kellogg Drive and a private drive. Kellogg Drive, at this location, is a frontage road with 50 feet of full street right-of-way that exits 143<sup>rd</sup> Street eastward (354.56 feet north of Kellogg) along the north side of Parcels 4a, that contains the existing Quiktrip, and 4b, the application area, turns south, forming the eastern boundary of the application area, before it turns back east, and runs further east along the north side of Kellogg/U.S. 54/400 where it dead ends approximately 770 feet further east of the application area; at the eastern boundary of DP-273. The second point of access to the site is via a driveway that runs east from 143<sup>rd</sup> Street, just north of the Kellogg/U.S. 54/400 right-of-way through the Quiktrip parking lot, and connects with Kellogg Drive at the southeast corner of the subject site. The site does not have direct access to Kellogg/US 54/400.

The applicant’s site plan depicts one point of access via a drive to East Kellogg Drive located on the east side of the property. The site plan also shows one building located on the northern end of the lot, approximately 45 feet from the site’s northern lot line. A fence is shown encircling the site. The applicant’s agent indicates it is a two-foot high railing designed to prevent ingress and egress to the site except at the proposed driveway. The site plan also shows a 35-foot building setback along the north and east property line but does not indicate building setback lines along the south and western property line. The existing CUP depicts a 35-foot building setback along the south property line and a 15-foot building



setback along the west parcel line. Along the western border of the site plan there is a 98-foot by 7.28-foot indentation. If that land is to be excepted from Parcel 4b for use by Parcel 4a, a revised CUP drawing and parcel calculations should be provided if this request is approved.

DP-273 contains 17.11 acres that are divided between eight other parcels and one reserve. Except for one parcel, Parcel 4a, all the parcels within DP-273 are vacant. Parcel 4a, located west of the subject property, is zoned LC subject to the development standards of DP-237, and is developed with a Quiktrip convenience store. (At an earlier time, the application area was part of a larger parcel but has since been divided to create Parcels 4a and 4b.) DP-273 has a row of parcels (Parcels 1A, 1B and 3 with a minimum lot depth of 185 feet) located north of subject site and Kellogg Drive that separates the subject tract from a single-family residential subdivision, the Park East Addition, zoned SF-5 Single-family Residential ("SF-5"), that is located north of DP-273. Land immediately to the east, across Kellogg Drive, is zoned LC, subject to the development standards of DP-273, and is undeveloped. Further east are approximately 78 acres zoned SF-20 Single-family Residential ("SF-20"), developed with a residence. Property to the south, across Kellogg/U.S. 54/400, is zoned SF-20, and is developed with large-lot residences, approximately 26,136 square feet. The closest vehicle sales to the application area that staff is aware of are located one mile to the west, west of 127<sup>th</sup> Street, and one mile to the east, southeast corner of 159<sup>th</sup> Street and U.S. 54/400 (Andover).

"Vehicle and equipment sales, outdoor" are permitted in the LC zoning district only with Conditional Use approval, subject to Supplementary Use Regulations, Article III, Section III.D.6.x and D.6.hh. Supplementary Use Regulation Section III-D.6.x indicates vehicle and equipment sales:

- (1) Locations shall be contiguous to a major street.
- (2) Visual screening of areas adjacent to residential zoning districts shall be provided to protect adjacent properties from light, debris and noise.
- (3) All parking, outdoor storage and display areas shall be paved with concrete, asphalt or asphaltic concrete or any comparable hard surfacing material.
- (4) Lighting sources, including base or pedestal, pole and fixture, shall employ cut-off luminaires to minimize light trespass and glare, and shall be mounted at a height not exceeding one-half the distance from the neighboring lot, unless evidence is presented the light source will be aimed or shielded such that the light source is not visible from the neighboring lot. Light sources shall be limited to 15 feet in height within 200 feet of residential zoning districts.
- (5) No sound amplification system for projecting music or human voices shall be permitted on any property zoned NO or more intensive if the music and/or voices can be heard within any residential zoning district that is located within a 500-foot radius of the subject site. Outdoor speakers and sound amplification systems are not permitted.
- (6) No repair work shall be conducted except in an enclosed building, and no fender or body work is allowed.
- (7) No portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be permitted.

With respect to development standards listed above: (1) The subject location is adjacent to a major street (U. S. 54/400). (2) The subject site is separated from SF-5 zoning located to the north by 235 feet of street right-of-way and LC zoned land that is required by General Provision 14 of DP-273 to provide a screening wall as each parcel develops. (3) Recommended condition of approval number 7 below mirrors that requirement. (4) Parcel 4b is located 213 feet from residential zoning to the south, 235 feet from the north; 445 feet to the east and 805 feet to the east; therefore, this development standard does not apply. (Parcel 4b is permitted by General Provision 17 to have light poles up to 25 feet between the street wall

line of the building and U.S. Highway 54; otherwise light poles are limited to 20 feet. General Provision 16 requires exterior lighting to be shielded to prevent light disbursement in all directions.) (5) Recommended condition of approval number 8 below mirrors that requirement. (6) Recommended condition of approval number 2 below mirrors that requirement. (7) Recommended condition of approval number 6 below mirrors that requirement.

For those lots zoned LC but located in a CUP, an amendment to the CUP takes the place of Conditional Use approval.

Signage is controlled by CUP General Provision No. 13 which states, in part, signs shall be in accordance with the Sign Code. Monument type signs are permitted along arterial roadways, spaced 150 feet apart. Flashing signs (except for signs showing only time, temperature and other public service messages), rotating or moving signs, signs with moving lights or signs which create illusions of movement are not permitted. No signs shall be allowed on the rear of any buildings. Freestanding monument signs are limited to a maximum height of 20 feet, except for Parcel 4a, which can have one monument type sign with a maximum height of 25 feet along the frontage of U.S. Highway 54. The maximum square footage of sign face allowed in Parcel 4b shall not exceed 80% of lot frontage.

All parcels are required to share similar parking lot lighting elements, and are to be shielded to prevent light disbursement in all directions. Parcel 4b is permitted to have light poles up to 25 feet between the street wall line of the building and U.S. Highway 54; otherwise light poles are limited to 20 feet (General Provisions No. 16 and 17). Exterior audio systems that project sound beyond the boundary of the CUP are prohibited (General Provision No. 20). All building exteriors within the CUP shall share consistent architectural design, earth tone colors and textures, unless waived as outlined in General Provision No. 23. Parcel 4b shall maintain compatibility with either Parcel 4a or Parcels 1a, 1b, 1c and 2 as a group (General Provision No. 23).

**CASE HISTORY:** The Prairie Pond Plaza CUP and LC zoning (CUP2003-00075 and ZON2003-65) were approved by the MAPC on May 6, 2004; City Council approval was on June 8, 2004. The Prairie Pond Plaza 2<sup>nd</sup> Addition was recorded in 2007. Case number CUP2008-00036 (September 30, 2008) was an Administrative Adjustment to divide Parcel 1 into three parcels; consolidate Parcels 4 and 5; relocate the alignment of Kellogg Drive; increase the height of lighting to 25 feet on Parcel 4 and increase the sign height to 25 feet on Parcel 4. CUP2008-04 (March 21, 2008) was an Administrative Adjustment to divide Parcel 1 into three parcels; consolidate Parcels 4 and 5; relocate the alignment of Kellogg Drive; increase light height to 25 feet on Parcel 4 and increase sign height to 25 feet on Parcel 4. Additional Administrative Adjustments were completed on December 12, 2004 and June 1, 2007.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, subject to DP-273, SF-5; vacant, single-family residences
SOUTH:	SF-20; large lot single-family residential (Springdale Country Club Estate)
EAST:	LC, subject to DP-273; vacant
WEST:	LC, subject to DP-273; Quick Trip convenience store

### Citizen Questions/Concerns

- Car lot will diminish home values in the area.
- Potential noise, traffic, trash in the area.
- Parking issues at the potential site.
- Potential waste water run offs.
- Standing water from the use of car washing.
- Lighting concerns for residents in the area.
- Vehicle delivery access.
- How many vehicles will be on the car lot?

**Recommended Action:** The DAB voted (7-2) to deny the Planning Departments recommendation.

Antione Sherfield  
Neighborhood Assistant – District II

4-19-12 MAPC

HANDOL.

ITEM # 16

**Crockett, Maryann**

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**From:** GaryAce939@aol.com  
**Sent:** Thursday, April 19, 2012 6:22 AM  
**To:** Crockett, Maryann  
**Subject:** case # cup 2012-00008

I am against a zoning change

4-19-12 MAPC

HANDOUT

ITEM # 16

Crockett, Maryann

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From: Agrammy5@aol.com  
Sent: Thursday, April 19, 2012 6:19 AM  
To: Crockett, Maryann  
Subject: case # cup 2012-00008

I am against the zoning change

4-19-12 MAPC

HANDOUT

ITEM #  
16

Crockett, Maryann

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From: Dieker [ljdieker@cox.net]  
Sent: Wednesday, April 18, 2012 9:07 PM  
To: Crockett, Maryann  
Cc: Don Murphy

To Dale Miller

District Advisory Board

Case # CUP2012-00008

As president of the Shoal Creek Home Owners association I represent the Shoal Creek Neighborhood. Due to the time of the MAPC meeting it is difficult for us to have representation at the meeting. Our annual meeting was held on April 5th 2012 and it was a unanimous decision to oppose the development plans for the car and vehicle sales lot proposed to the east of Quik Trip and East of 143 st east. The current traffic is excessive as well as the additional noise. Other opposition is the lighting that would be on 24 hours per day in a primarily residential area and the additional traffic problems and noise. I speak for our entire community in saying that we are strongly in favor of blocking this development and any other development of this type. We support Quik Trip by purchasing gas and other products daily so Quik Trip should support it's good faithful neighbors and find a more suitable or compatible use for this property.

Thank you for your support.

Carl G Dieker

President Shoal Creek HOA

H-19-12 MAPC

HANDOV.

ITEM # 16

Crockett, Maryann

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From: the-moores@cox.net  
Sent: Wednesday, April 18, 2012 9:41 PM  
To: Crockett, Maryann  
Subject: Case #CUP2012-00008

To whom it may concern:

We would like to vehemently voice our opposition to the zoning change at 143rd Street East and Kellogg. We DO NOT want vehicle and equipment sales allowed at this location. We believe this intersection is already much too small to handle the amount of traffic currently travelling through on a daily basis. 143rd Street being a single lane each direction certainly cannot handle the increased traffic. Except for Quik Trip, this is a residential area.

Thank you.

Harlan & Elaine Moore  
13825 Whitewood  
Wichita, KS 67230  
316-733-9591

### Brief Summation:

DP-273 protective overlay for this case was established for this site and the surrounding SF neighborhoods. Enforce.

There is existing traffic problem at this intersection now. And it will get worse with out roadway improvement and the addition of another business.

A traffic study should be required before any commercial additions.

A storm water runoff study for this particular usage should be required before approval.

No Kellogg entrance, No turn around, and no parking.

Other sites are available and more suitable for this type of business.

### 1. Current zoning uses, protective overlay and character of the neighborhoods.

Before being zoned Limited Commercial the Wichita – Sedgwick communities insisted on a protective overlay including no vehicle and equipment sales for DP-273 and the use was eliminated when the plan was approved.

The character of the Wichita – Sedgwick neighborhoods surrounding the DP-273 site has not changed Commercially except for Quick Trip.

It is predominately single family residential neighborhoods (built after the 1950's) north and south of Kellogg with Ponds and/or lakes. Farm land (zoned LC) east and west with no other commercial construction within approximately one mile of DP-273.

### 2. The subject land is not suitable for the requested use and will have a detrimental impact.

Originally Traffic provisions were to be made for a Kellogg flyover to Andover. Now to 127<sup>th</sup> street with a ten year wait before the flyover begins. No traffic improvements have been made to reduced existing traffic flow into Quiktrip and DP-273. None can be expected for car lot usage.

Quiktrip traffic blocks all traffic on Kellogg and 143<sup>rd</sup> street for thru and turn traffic due to the entrance being to close to Kellogg. 143<sup>rd</sup> street was to have turn lanes to handle traffic into Quiktrip and onto Kellogg at this intersection. Accidents have increased due traffic congestion at 143<sup>rd</sup> and Kellogg.. A Traffic study including the number and types of vehicles turning into Quiktrip entrances, East Kellogg Drive, Kellogg, and 143<sup>rd</sup> Street need to occur before additional commercial activity other than Quiktrip happens.

No existing Kellogg turn lane, entry or frontage roadway to provide access other than 143<sup>rd</sup> Street, East Kellogg Drive, or a Quiktrip entrance (a private drive should not an entrance to a separate business). This provides traffic concerns for all these roadways, streets and entrances.

No turn around for traffic (hauling/delivery/semi trucks, cars).

Speed reductions to 45 mph along Kellogg and 35 mph along 143<sup>rd</sup> street due to the increase of traffic slowdowns.

Are set backs to be paved? With paved vehicle parking and paved setbacks.the total pavement size and the nature of use (washing cars/lot cleanup spraying) will increase the water run off.

Storm water runoff of one acre of pavement can generate 825,000 gallons in a year. The damage from vehicles (oil and grease) are major storm water pollutants.

Harm to ponds/ lakes and groundwater south of Kellogg may occur and the county and city could incur a loss for cleanup. A water run off study needs to be required for the purposed use. There is already improper drainage at the northeast and northwest corners of Kellogg and 143<sup>rd</sup> street causing constant standing water with mud holes from vehicle attempting to turn west onto Kellogg and north on 143<sup>rd</sup>.



Vehicle repair, salvage, fuel dump, storage, PA system, and employee/customer parking are also a concern.

There is no barrier to the adjoining Park East neighborhood. DP-273 General Provision # 14 was changed from a masonry wall eight feet high along the north property line before building to the wall will be constructed as each parcel develops. This does not provide a line of sight or sound barrier (screening) to Park East. The removal of dirt has made a change from a equal elevation level to three different levels with land erosion and storm water runoff at all levels. The sound pollution from Kellogg, 143<sup>rd</sup> street and Quiktrip has increased significantly. A car lot will increase it.

Problems with trash, signage, lights, air brakes, semi and other vehicle overnight parking, noise pollutants, line of sight, Exist now and will increase as use concerns for these neighborhoods.

There are six areas west of K96 for sale and suitable for vehicle and equipment sales. Two with existing buildings. Another for sale is on the northwest corner of Kellogg and 143<sup>rd</sup> street and it has no adjacent residential neighborhood.

The request does not project our neighborhoods way of life or living conditions and would be better suited elsewhere so as not to decrease the property values of our Wichita – Sedgwick communities.

The Park East storm water runoff drainage that runs from a creek on the Southeast of Park East lot 18 has changed from before the DP-273 to now. Dirt Berms were built for sale using heavy moving equipment. This Traffic flattened out the creek so that it no longer drains to the pond on DP-273. A culvert or scooping out of the creek may bring the land back to the natural state before DP-273.

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** ZON2012-00012 – City zone change request from SF-5 Single-family Residential to TF-3 Two-family Residential generally located mid-mile between East 13th Street North and East 21st Street North, along the west side of North 127th Street East (1815 North 127th Street East). (District II)

**INITIATED BY:** Metropolitan Area Planning Department

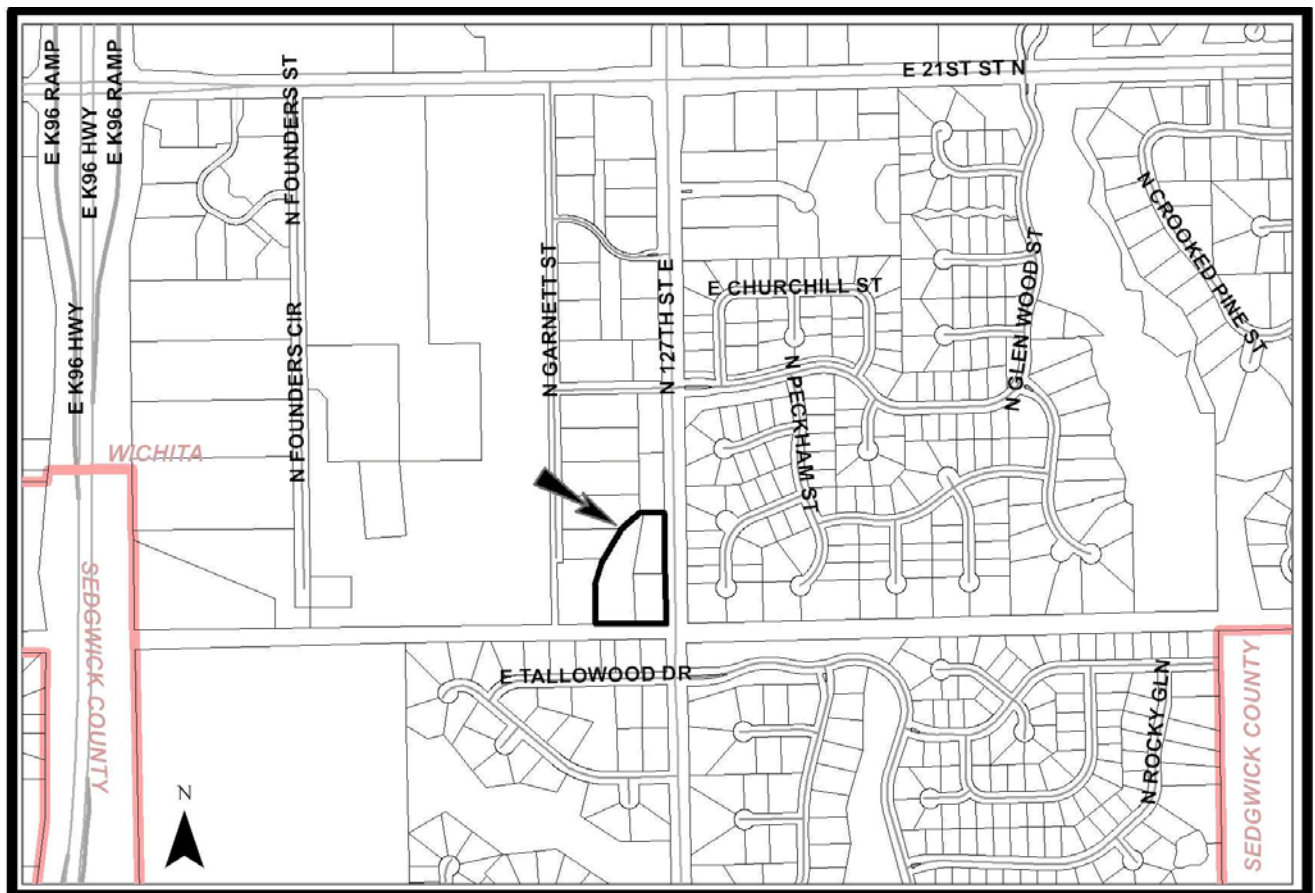
**AGENDA:** Planning (Non-Consent)

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**MAPC Recommendation:** Approve, (12-0)

**DAB IV Recommendation:** Approve with a Protective Overlay, (8-0)

**MAPD Staff Recommendation:** Approve



**Background:** The applicant requests a zone change from SF-5 Single-family Residential (“SF-5”) to TF-3 Two-family Residential (“TF-3”) on two acres consisting of Lot 1 and 1/13<sup>th</sup> undivided interest in the Lake facility and Lot 2 and 1/13<sup>th</sup> undivided interest in the Lake facility, Lakeside Acres 1<sup>st</sup> Addition, Wichita, Sedgwick County, Kansas. The subject site is located approximately one-half mile between East 13th Street North and East 21st Street North, along the west side of North 127th Street East (1815 North 127th Street East). The applicant proposes to develop the property with upper-scale, executive duplex structures. The *Unified Zoning Code* (UZY) defines a duplex as...“the use of a lot for two principal dwelling units within a single building.” The code permits building heights up to 35 feet in the TF-3 district, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing property would allow only one duplex structure with two living units or one single-family structure (permitted by right in the TF-3 district); however it is possible to replat or lot split the existing 1.76-acre (or 75,358 square feet) lot into twelve 6,279 square-foot lots that could allow twelve duplex structures (3,000 square feet minimum lot area per dwelling unit for duplex or 6,000 square feet per duplex). However, the applicant only intends to build four duplex structures containing a total of eight dwelling units.

All property surrounding the subject site is zoned SF-5, and is developed with single-family residences. The properties to the east are separated from the subject site by 127<sup>th</sup> Street East and the properties to the south are separated from the subject site by the old railroad right-of-way.

**Analysis:** At the Metropolitan Area Planning Commission (MAPC) meeting held May 3, 2012, the MAPC voted (12-0) to recommend approval of the request. There was one person who spoke in opposition to the case, citing sewer connections and how the buildings will be sited on the site. Commission members asked questions regarding fire access and sewer connections.

On May 7, 2012, the District Advisory Board (DAB) II heard the rezone request. The DAB voted (8-0) to approve the request. The DABs approval also included the requirement that four conditions be added, in the form of a Protective Overlay, to their recommendation of approval. The four added conditions of approval were suggested by a citizen’s presentation, and they were:

- Construction to be limited to a maximum of four duplex structures (Not the possible maximum of 12 in the staff report.)
- Developer will upgrade the existing drainage ditch between Lot 2 and Lot 3.
- Sewer connection for new construction will be with zero economic/financial impact on all other property owners in the subdivision.
- Insure electrical grid connection is accomplished without degradation of service to other property owners.

After staff review of the four conditions, it was determined that only two would be enforceable through the rezoning process. Protective Overlay #269 adds the following two provisions to ZON2012-00012:

1. Construction is to be limited to a maximum of four duplex structures, or eight dwelling units.
2. The developer will upgrade the existing drainage ditch between Lot 2 and Lot 3, as approved by the City stormwater engineer.

Staff received five protests, however only two were partly within the 200-foot protest area. The two valid protests equal 5.28 percent of the protest area. A simple majority vote is required for approval of the request.

**Financial Considerations:** Approval of this request will not create any financial obligations for the City.

**Goal Impact:** The application will promote Economic Vitality.

**Legal Considerations:** The Law Department has reviewed and approved the ordinance.

**Recommendation/Actions:**

1) Adopt the findings of the MAPC and approve the zone change request with Protective Overlay #269, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required); 2) deny the requested zone change (two-thirds majority required) or 3) return the application to the MAPC for further consideration (simple majority required).

**Attachments:** Ordinance, MAPC minutes, protest map and DAB Memo.

(150004) Published in The Wichita Eagle on June 15, 2012

ORDINANCE NO. 49-283

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2012-00012

Zone change request from SF-5 Single-family Residential ("SF-5") to TF-3 Two-family Residential ("TF-3") subject to Protective Overlay #269, on property described as:

Lot 1 and 1/13th undivided interest in Lake Facility, Lakeside Acres 1st Addition to Wichita, Sedgwick County, Kansas.

AND

Lot 2 and 1/13th undivided interest in Lake Facility, Lakeside Acres 1st Addition to Wichita, Sedgwick County, Kansas. Generally located midway (mid-mile) between East 13th Street North and East 21st Street North, along the west side of North 127th Street East (1815 North 127th Street East).

SUBJECT TO THE FOLLOWING PROTECTIVE OVERLAY RESTRICTIONS:

1. Construction to be limited to a maximum of four duplex structures, or eight dwelling units.
2. Developer will upgrade the existing drainage ditch between Lot 2 and Lot 3, as approved by the City stormwater engineer.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 12th day of June, 2012.

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

\_\_\_\_\_  
Carl Brewer, Mayor

(SEAL)

Approved as to form:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

**EXCERPT MINUTES OF THE MAY 3, 2012 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION HEARING**

**Case No.: ZON2012-12** - Robert James Morris (Owner/Applicant), Robert Heider, (Owner/Applicant), Lynne Penner (Agent) and Todd Fox (Agent) request a City zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential on property described as:

Lot 1 and 1/13th undivided interest in Lake Facility, Lakeside Acres 1st Addition to Wichita, Sedgwick County, Kansas.

AND

Lot 2 and 1/13th undivided interest in Lake Facility, Lakeside Acres 1st Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant requests a zone change from SF-5 Single-family Residential (“SF-5”) to TF-3 Two-family Residential (“TF-3”) on two acres consisting of Lot 1 and 1/13<sup>th</sup> undivided interest in the Lake facility and Lot 2 and 1/13<sup>th</sup> undivided interest in the Lake facility, Lakeside Acres 1<sup>st</sup> Addition, Wichita, Sedgwick County, Kansas. The subject site is located approximately one-half mile between East 13th Street North and East 21st Street North, along the west side of North 127th Street East (1815 North 127th Street East). The applicant proposes to develop the property with upper-scale, executive duplex structures. The *Unified Zoning Code* (UZC) defines a duplex as...“the use of a lot for two principal dwelling units within a single building.” The code permits building heights up to 35 feet in the TF-3 district, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing property would allow only one duplex structure with two living units or one single-family structure (permitted by right in the TF-3 district); however it is possible to replat or lot split the existing 1.76-acre (or 75,358 square feet) lot into twelve 6,279 square-foot lots that could allow twelve duplex structures (3,000 square feet minimum lot area per dwelling unit for duplex or 6,000 square feet per duplex). However, the applicant only intends to build four duplex structures containing a total of eight dwelling units.

All property surrounding the subject site is zoned SF-5, and is developed with single-family residences. The properties to the east are separated from the subject site by 127<sup>th</sup> Street East and the properties to the south are separated from the subject site by the old railroad right-of-way.

**CASE HISTORY:** Lot 1 and 1/13<sup>th</sup> undivided interest in the Lake Facility and Lot 2 and 1/13<sup>th</sup> undivided interest in the Lake facility, Lakeside Acres 1<sup>st</sup> Addition, Wichita, Sedgwick County, Kansas, was recorded with the Register of Deeds on April 6, 1955.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Single-family Residences
SOUTH:	SF-5	Single-family Residences
EAST:	SF-5	Single-family Residences
WEST:	SF-5	Single-family Residences

**PUBLIC SERVICES:** 127<sup>th</sup> Street East is classified as a two-lane, paved minor arterial road with no traffic counts. Municipal water and sewer does serve the subject area.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use. Urban Residential is a

category that encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes: single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request for the TF-3 Two-family Residential (“TF-3”) zoning be APPROVED.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** All property surrounding the subject site is zoned SF-5 and develop with single-family residences. The properties to the east are separated from the subject site by 127<sup>th</sup> Street East and the properties to the south are separated from the subject site by the old railroad line and right-of-way.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be developed with multiple single-family residences use under the current zoning.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** As currently zoned, approval of the request would double the density at which the site could be developed. The impact on nearby residents could be increased traffic. However, single-family residences typically generate more traffic per unit than two-family residences.
4. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Denial presumably could cause the applicant a relative economic loss. Approval could introduce a multi-family residential use in a predominant single-family residential setting where such uses are increasing in popularity, especially high end duplex and multi-family development.
5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use. Urban Residential is a category that encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes: single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.
6. **Impact of the proposed development on community facilities:** The site currently has one point of access from 127<sup>th</sup> Street East, a minor arterial. Approval of the request should not have a negative impact on community facilities; especially since all sewer and water lines are in place and roads have already been constructed.

DERRICK SLOCUM, Planning Staff presented the Staff Report.



**ROBERT MORRIS, LAKESIDE COURTS, LLC** said they plan to develop 4 executive duplex style properties. He referred Commissioners to a handout featuring a rendering done by Mid-Kansas Engineering of the proposed construction. He said the duplexes will be 3-bedroom, 3-bath and lease anywhere from \$1,100 to \$1,300 per month. He said their target market will be corporate rentals. He said there will be 2 gated entrances and each duplex will have its own driveway.

**ALDRICH** asked where the gates will be located and mentioned his concern about traffic flow.

**MORRIS** said one gate will be located at the existing entrance to the property and another gate will be located further to the north.

**FOSTER** asked staff about access for the Fire Department.

**SLOCUM** said the applicant will need to work that out with the Fire Department.

**RAYMOND MORRISSETTE, 1840 NORTH GARNETT** said he lived directly across from the proposed development. He said although the neighbors might agree that the current property is an eye sore, he said he had questions that needed to be addressed. He said the area was platted back in 1954 and the neighborhood is on septic systems; however, the Staff Report refers to City sewer and water lines. He asked how that will be done and if the entire neighborhood will be forced to connect to City sewer. He said the neighborhood was annexed by the City and some of the residents have City water. He said most of the neighbors are senior citizens on fixed incomes. He also asked how the buildings will be sited on the lots. He said there is a major power line that trisects the south end of the property and he does not believe they can build under the transmission line. In addition, he said there is a major gas pipeline along the west side of 127<sup>th</sup> Street that he believes will also impact construction. He also asked about setbacks.

**ROBERT MORRIS** introduced **MARK EGCEL, EGCEL CONSTRUCTION**. **MORRIS** indicated that Mr. Morrisette is correct; they cannot build under the power line. In addition, he said easements will be provided from the gas line. He said they plan on bringing in a sewer line to correctly service the area. He said if they developed the property with single-family residences City water and sewer would still be required. He said they are not under the impression that the neighbors will be forced to connect to the system.

**KLAUSMEYER** asked if the sewer line will be privately funded.

**EGCEL** said yes and added that it is part of the building process.

**FARNEY** asked staff if the other folks in the area will be required to hook up to the City sewer line.

**SLOCUM** said he did not think that would be a requirement.

**G. SHERMAN** asked about platting.

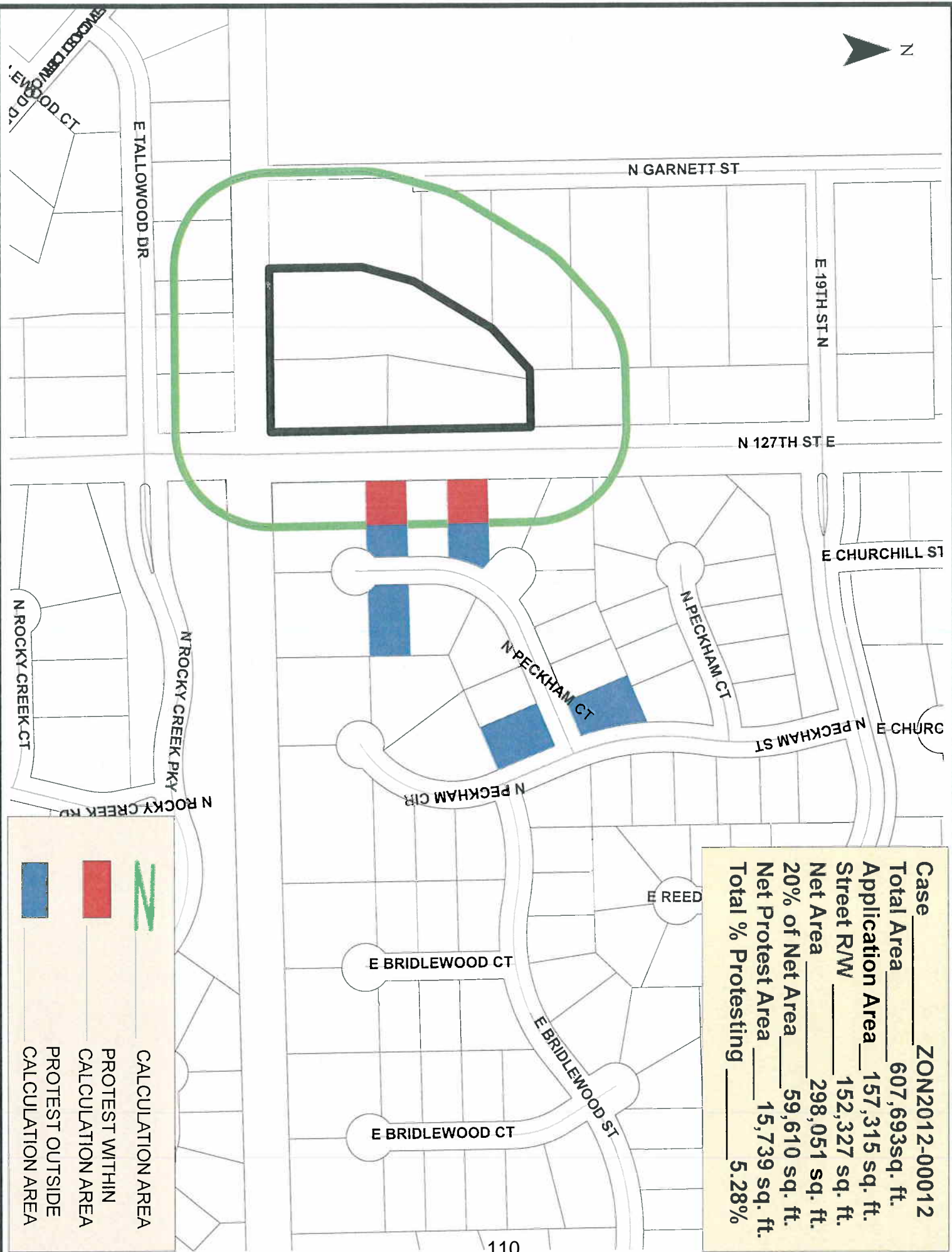
**SLOCUM** said the area is already platted; however, he added later that the applicant will do lot splits.

**MCKAY** suggested that the applicant and neighbors get together to discuss additional details.


**MOTION:** To approve subject to staff recommendation.


**SHERMAN** moved, **JOHNSON** seconded the motion, and it carried (12-0).


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Case	ZON2012-00012
Total Area	607,693sq. ft.
Application Area	157,315 sq. ft.
Street R/W	152,327 sq. ft.
Net Area	298,051 sq. ft.
20% of Net Area	59,610 sq. ft.
Net Protest Area	15,739 sq. ft.
Total % Protesting	5.28%

  
CALCULATION AREA

  
PROTEST WITHIN  
CALCULATION AREA

  
PROTEST OUTSIDE  
CALCULATION AREA



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**INTEROFFICE  
MEMORANDUM**

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**TO:** MAPC Members  
**FROM:** Antione Sherfield, Neighborhood Assistant, District II  
**SUBJECT:** ZON2012-00012:  
**DATE:** May 21, 2012

On Monday, May 7, 2012, the District II Advisory Board considered the request to change Zoning from SF-5 Single-family Residential (“SF-5”) to TF-3 Two-family Residential (“TF-3”) located midway (mid-mile) between East 13<sup>th</sup> Street North and East 21<sup>st</sup> Street North, along the west side of North 127<sup>th</sup> Street East (1815 North 127<sup>th</sup> East Street).

The applicant requests a zone change from SF-5 Single-family Residential (“SF-5”) to TF-3 Two-family Residential (“TF-3”) on two acres consisting of Lot 1 and 1/13<sup>th</sup> undivided interest in the Lake facility and Lot 2 and 1/13<sup>th</sup> undivided interest in the Lake facility, Lakeside Acres 1<sup>st</sup> Addition, Wichita, Sedgwick County, Kansas. The subject site is located approximately one-half mile between East 13<sup>th</sup> Street North and East 21<sup>st</sup> Street North, along the west side of North 127<sup>th</sup> Street East (1815 North 127<sup>th</sup> Street East). The applicant proposes to develop the property with upper-scale, executive duplex structures. The *Unified Zoning Code* (UZC) defines a duplex as...“the use of a lot for two principal dwelling units within a single building.” The code permits building heights up to 35 feet in the TF-3 district, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing property would allow only one duplex structure with two living units or one single-family structure (permitted by right in the TF-3 district); however it is possible to replat or lot split the existing 1.76-acre (or 75,358 square feet) lot into twelve 6,279 square-foot lots that could allow twelve duplex structures (3,000 square feet minimum lot area per dwelling unit for duplex or 6,000 square feet per duplex). However, the applicant only intends to build four duplex structures containing a total of eight dwelling units.

All property surrounding the subject site is zoned SF-5, and is developed with single-family residences. The properties to the east are separated from the subject site by 127<sup>th</sup> Street East and the properties to the south are separated from the subject site by the old railroad right-of-way.

**CASE HISTORY:** Lot 1 and 1/13<sup>th</sup> undivided interest in the Lake Facility and Lot 2 and 1/13<sup>th</sup> undivided interest in the Lake facility, Lakeside Acres 1<sup>st</sup> Addition, Wichita, Sedgwick County, Kansas, was recorded with the Register of Deeds on April 6, 1955.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Single-family Residences
SOUTH:	SF-5	Single-family Residences
EAST:	SF-5	Single-family Residences
WEST:	SF-5	Single-family Residences

**Recommended Action:** The DAB voted (8-0) in approval of the request.

Antione Sherfield  
Neighborhood Assistant – District II

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Community Events – LIV Music and Arts Festival (District VI)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure the event promoter, Adam Hartke Orpheum Performing Arts Theater is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**LIV Music & Arts Festival June 15, 2012 12:00 am – June 17, 2012 2:00 am**

- Broadway Street, Douglas Avenue to Second Street

**LIV Music & Arts Festival June 15, 2012 4:00 pm – June 17, 2012 2:00 am**

- First Street, Market Street to Topeka Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

**Financial Consideration:** The event promoter is responsible for all costs associated with special events.

**Goal Impact:** Enhance the Quality of Life for citizens through special events and activities.

**Legal Consideration:** There are no legal considerations.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: (1) hiring off-duty certified law enforcement officers as required; (2) obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Supplemental Agreement No. 1 for OneRain – Flood Warning System (All Districts)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve Supplemental Agreement No. 1.

**Background:** The Public Works & Utilities, Stormwater Management Division provides accurate and consistent rainfall, stage and other data on a real time basis to the National Weather Service and to the public to facilitate decision making before, during and after storm events to reduce the risk of property damage, injury and loss of life. On November 22, 2011, the City Council approved the agreement with OneRain to install the Automated Local Evaluation in Real Time flood warning system.

**Analysis:** City IT/IS staff is requiring an additional OneRain Base Station license and server to provide the required network redundancy and security associated with allowing the public to access the Flood Warning System.

**Financial Considerations:** The original contract amount was \$95,140. The total contract amount for Supplemental No. 1 is \$23,360, which includes all equipment necessary to install a third base reference station. This brings the total project budget to \$118,500. Funding is available in the Flood Control operating budget.

**Goal Impact:** This agreement addresses the Efficient Infrastructure goal by providing the tools necessary to track stormwater rainfall and stream levels throughout the City and County.

**Legal Considerations:** The Law Department has approved Supplemental Agreement No. 1 as to form.

**Recommendation/Action:** It is recommended that the City Council approve Supplemental Agreement No. 1 and authorize the necessary signatures.

**Attachments:** Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT #1

for

PROFESSIONAL SERVICES

BETWEEN

THE CITY OF WICHITA, KANSAS

AND

ONERAIN, INC

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and ONERAIN, INC, party of the second part, hereinafter called the "ENGINEER".

WITNESSETH:

WHEREAS, there now exists a Contract (dated November 22, 2011) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the installation of a Flood Warning System (OCA No. 133224).

WHEREAS, the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of this Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION AND PAYMENT PROVISIONS

ENGINEER has recommended a third Base Reference Station to provide the required network redundancy and security associated with allowing the public to access the Flood Warning System. Exhibit 1 details the work to be completed not to exceed \$23,360.

B. COMPLETION

The ENGINEER agrees to complete the scope of the PROJECT in timely manner with the exception that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER. Anticipated completion date is June 30, 2012.

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract(s), not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental as of the date first written above.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, Director of Law

ONERAIN, INC

\_\_\_\_\_  
James Logan.

ATTEST:

\_\_\_\_\_



April 11, 2012

Scott C. Lindebak, P.E., CFM  
Storm Water Engineer  
Public Works - Storm Water Management  
City Hall - 8th Floor  
455 N. Main Street  
Wichita KS 67202

**Re: Proposal for Additional Contrail® Base Station**

Dear Scott,

Following our recent discussions and correspondence, I am pleased to provide our budgetary pricing for adding a third Contrail Base Station license and server for your Flood Warning System.

Your Flood Warning System has the following requirements:

- Redundancy of data collection
- Public Website

Network security requirements indicate that you need to add an additional server in order to have both redundant data collection and a public website. To connect the data collection on the SCADA network to redundant servers requires two servers to be protected within the city's VPN. The public website requires that server to be in the network's DMZ, which gives public access, and protects the systems behind that firewall.

The table below outlines pricing for an additional Contrail Base Station license and the additional annual recurring cost for Technical Support and Maintenance after the first year.



**HEADQUARTERS**

1531 Skyway Drive  
Unit D  
Longmont, CO 80504

800-758-RAIN

303.774.2033

Fax: 303.774.2037

www.onerain.com

information@onerain.com

Contrail Base Station	Qty	1 <sup>st</sup> Year	Annually Recurring
<b>Contrail Base Station License<sup>1</sup></b>	1	\$20,000	\$5,000
Includes:			
- Contrail <a href="#">Inventory</a>			
- Contrail <a href="#">Insight</a>			
<b>Set Up and Configuration</b>			
- Server Set up & Configuration	1	\$3,360	
<b>TOTAL</b>		<b>\$23,360</b>	<b>\$5,000</b>

<sup>1</sup> The Annual Technical Support and Maintenance after first year for software licenses/service is 25% of the list price.

**TERMS AND CONDITIONS**

The above pricing assumes annual subscription fees are paid in advance. This pricing is valid for 60 days from the date of this correspondence, longer at OneRain's discretion. Unless expressly agreed to in writing by both parties in advance, OneRain's standard Net 30 payment terms will apply to all sales. Finance charges are accrued on past due invoices at a rate of 18% per annum.

Should you have any questions or require further information, please feel free to contact me directly.

Sincerely,



James Logan  
President & CEO  
T. 303-774-2033  
Email: james.logan@onerain.com



City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Supplemental Design Agreement No. 2 for Central Avenue from 135<sup>th</sup> Street West to 119<sup>th</sup> Street West (District VI)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve Supplemental Agreement No. 2.

**Background:** On May 4, 2004, the City Council approved an agreement with MKEC Engineering Consultants, Inc. (MKEC) to prepare design concepts for paving Central Avenue from 135<sup>th</sup> to 119<sup>th</sup> Street West. On August 19, 2008, Supplemental Agreement No. 1 was approved for additional design to straighten the road and for structures that would accommodate the existing location of the North Fork Calfskin Creek channel.

**Analysis:** Supplemental Agreement No. 2 will provide additional design for the following. Well into design of the project the Federal Emergency Management Agency changed the flood hazard maps for the North Fork Calfskin Creek, requiring significant additional work for flood modeling and map revisions. In addition, raised medians will need to be added in 135<sup>th</sup> Street, both north and south of Central for safe access control. This will require modifications to intersection design details, elevations, and driveways. These medians became a necessity after the Council approved realigning Central onto the section line.

**Financial Considerations:** Payment to MKEC for Supplemental Agreement No. 2 is on a lump sum basis of \$112,756 and will be paid 100% by General Obligation Bonds. Funding is available within the existing project budget. With this supplemental agreement, the total design fee for the Central Avenue from 135<sup>th</sup> to 119<sup>th</sup> Street West improvements will be \$504,571.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of public improvements on a major arterial street.

**Legal Considerations:** The supplemental agreement has been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve the supplemental agreement and authorize the necessary signatures.

**Attachments:** Supplemental Agreement No. 2.

SUPPLEMENTAL AGREEMENT NO. 2  
TO THE  
AGREEMENT FOR PROFESSIONAL SERVICES DATED May 4, 2004  
BETWEEN  
THE CITY OF WICHITA, KANSAS  
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE  
"CITY"  
AND  
MKEC ENGINEERING CONSULTANTS, P.A.  
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE  
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated May 4, 2004) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the **CENTRAL AVENUE FROM 135<sup>TH</sup> TO 119<sup>TH</sup> STREET WEST IMPROVEMENTS** (Project No. 472 84017).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

**Additional Scope of Services**  
(see Exhibit "A-1")

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement will increase the total contract by **\$112,756.00.**

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANTS, P.A.

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council Members

**SUBJECT:** Supplemental Design Agreement No. 1 for Broadway Bridge at 34<sup>th</sup> Street South (District III)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve Supplemental Agreement No. 1.

**Background:** On July 7, 2009, the City Council approved an agreement with MKEC Engineering Consultants, Inc. (MKEC) to prepare design concepts and construction plans for replacing the Broadway Bridge at 34<sup>th</sup> Street South.

**Analysis:** Supplemental Agreement No. 1 will provide additional design for the following. Relocation of the Mathewson-Murray house as directed by the State Historic Preservation Office will require development of a site plan and re-plat of the area, which includes a drainage plan and other documentation to insure approval by the Metropolitan Area Planning Committee. In addition, a storm water treatment system will need to be designed to serve right-of-way drainage to the LaFarge Lake, and the Kansas Department of Transportation has requested office check plans to be formally submitted, which is not normal procedure. Finally, redesign of roadway geometrics is necessary to meet Union Pacific Railroad requirements, including a “shoofly” detour utilizing a Geosynthetic Reinforced Soil abutment, which will allow Broadway traffic to continue using the existing bridge for the majority of the project.

**Financial Considerations:** Payment to MKEC for Supplemental Agreement No. 1 is on a lump sum basis of \$69,685 and will be paid 100% by General Obligation Bonds. Funding is available within the existing project budget. With this supplemental agreement, the total design fee for the Broadway Bridge at 34<sup>th</sup> Street South improvement will be \$493,935.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of public improvements on a major arterial street.

**Legal Considerations:** Supplemental Agreement No. 1 has been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve Supplemental Agreement No. 1 and authorize the necessary signatures.

**Attachments:** Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1  
TO THE  
AGREEMENT FOR PROFESSIONAL SERVICES DATED JULY 7, 2009  
BETWEEN  
THE CITY OF WICHITA, KANSAS  
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE  
"CITY"  
AND  
MKEC ENGINEERING CONSULTANTS, P.A.  
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE  
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated July 7, 2009) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the **BROADWAY BRIDGE AT 34<sup>TH</sup> STREET SOUTH IMPROVEMENTS** (Project No. 472 84830).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

**Additional Scope of Services**  
(see Exhibit "A-1")

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement will increase the total contract by **\$69,685.00.**

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANTS, P.A.

\_\_\_\_\_  
ATTEST:



# MKEC ENGINEERING CONSULTANTS, INC.

Kansas City Oklahoma City Wichita



March 20, 2012

Mr. Gary Janzen, P.E.  
Design Engineer, City of Wichita  
455 N. Main, 7<sup>th</sup> Floor  
Wichita, KS 67202

Reference: Proposal for Supplemental Design Fees  
Project No. 472-84830: Broadway Bridge at 34<sup>th</sup> Street South

Dear Mr. Janzen:

Per the City's request, MKEC agrees to a change in design scope for the project noted above.

The current project scope is to design a new bridge on Broadway Avenue to carry traffic across the Union Pacific Railroad (UPRR) tracks including approach roadway on each side of the bridge. Due to the unusually large skew angle between the tracks and the roadway, the new bridge will need to be very long or the proposed roadway will need to be altered to reduce the size of the skew angle. Part of the current scope includes a concept phase to explore all valid options, present the options to the City and proceed with final design and construction plans for the selected option.

Due to circumstances beyond MKEC's control, several items have surfaced during the design phase of the project that need to be addressed or satisfied before construction can commence. These items will require additional design services to be performed that are not included in the original design contract. These items were not foreseen by MKEC or the City during the design contract preparation. The items are described below:

- Prepare a site plan for the relocation of the historic Mathewson-Murray house and assist the City with the preparation of reports and documents to support the relocation of the house to a new lot within the project limits. The site plan is to include a survey depicting the location of the house and other property features with respect to the property lines. Public utility service lines will also be included.  
Hours - 80, Fee - \$6,520.00
- Prepare a re-plat of a parcel of property, making a portion of the property a residential lot for the relocation of the Mathewson-Murray house and possibly a second residential lot adjacent to the first. The re-plat will include a site survey including property iron placement, preparation of a site-drainage, water quality and erosion control report and leading the plat through the subdivision review process.  
Hours - 117, Fee - \$11,705.00
- Design and coordination of storm water treatment system to serve LaFarge North America. The treatment system will intercept storm water flows from the proposed Broadway street and remove a specified amount of total suspended solids (TSS) oil and grease prior to discharge of the storm water into the lake owned by LaFarge. The design will consider multiple options for

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treatment and the location of all treatment devices and will require the approval of LaFarge and the City of Wichita.

Hours – 76, Fee - \$6,320.00

- Prepare office check plans in Kansas Department of Transportation (KDOT) format and submit to KDOT for a formal office check review. Typically, this is a function not required on City projects utilizing federal funding and was not anticipated during contract preparation. Given the nature of this project and the uniqueness of the proposed bridge structure, KDOT has requested a formal office check review.

Hours – 200, Fee - \$18,400.00

- Perform post-Field Check re-design of roadway geometrics and storm sewer plan and profiles due to a UPRR required change in bridge alignment. As noted, MKEC prepared multiple bridge and roadway alignment concepts for City consideration. The concept selected by the City was presented to the railroad and preliminarily accepted. In this initial concept, the abutments of the new bridge extended out into the UPRR right-of-way but still provided the required railroad clearances. MKEC proceeded with design to the field check stage and submitted plans to KDOT and UPRR. The UPRR rejected the plan at this stage and required that all bridge elements be kept off UPRR right-of-way. This caused MKEC to develop a new bridge concept which will require new roadway geometry. The new concept has been approved by the UPRR but the re-design of the new roadway geometry and revisions to the storm sewer plan and profiles have yet to be made.

Hours – 132, Fee - \$9,660.00

- Design a shoofly detour utilizing a Geosynthetic Reinforced Soil (GRS) abutment and half of the existing Broadway Bridge. Again, MKEC prepared multiple bridge and roadway alignment concepts for City consideration. The concept selected by the City utilized an at-grade shoofly detour for Broadway traffic across the UPRR tracks. Accepted by the UPRR, this concept was developed into field check plans. During this same time, it became apparent that the UPRR was treating this crossing as permanent rather than temporary and costs for construction of the at-grade shoofly including costs for insurance and closing other street crossings in town made the at-grade crossing no longer feasible. This caused MKEC to develop the new concept that provides a temporary shoofly utilizing portions of the existing bridge to span to railroad and a GRS abutment adjacent and parallel to the railroad for the remainder of the shoofly. This concept allows removal of enough of the existing bridge to accommodate construction of the new bridge. This new concept has been approved by the UPRR but the re-design of the shoofly has yet to be completed.

Hours – 188, Fee - \$17,080.00

MKEC proposes a total maximum supplemental design fee of \$69,685.00 to perform the design of the revised scope items above. Actual billing would be hourly with this amount stipulated as a not-to-exceed limit.

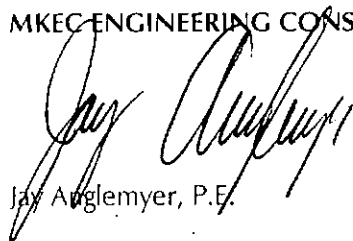
On behalf of MKEC, it has been a pleasure to work on this project. I am certain this will be a project I will personally be proud of upon completion of construction. MKEC intends to make it a project the City can be proud of too. Please contact me if you would like to discuss this in greater detail.

Mr. Gary Janzen, P.E.  
March 20, 2012

Page 2

Thank you for your consideration,

MKEC ENGINEERING CONSULTANTS, INC.

A handwritten signature in black ink, appearing to read "Jay Anglemeyer". The signature is written in a cursive, flowing style with a large initial "J".

Jay Anglemeyer, P.E.

JRA/cw

**City of Wichita  
City Council Meeting  
June 5, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Design Supplemental Agreement No. 3-I-235 Freeway at 13<sup>th</sup> Street Flyover  
(Districts V and VI)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve Supplemental Agreement No. 3.

**Background:** On March 10, 2009, the City Council approved the design concept and authorized the issuance of a request for proposal to provide consultant engineering services for a bridge across the Wichita-Valley Center Floodway connecting the I-235 By-pass to 13<sup>th</sup> Street. A contract with HNTB/PEC was executed on July 21, 2009, to begin engineering and conduct a required break-in-access study. On August 10, 2010, the City Council approved Supplemental Agreement No. 1 for the preparation of construction plans in advance of the Federal approval for the break in access. On June 21, 2011, the City Council approved Supplemental Agreement No. 2 to obtain the necessary environmental approval and split into three projects, one for the interchange, one for the relocation of Hoover and one for the intersection improvements at 13<sup>th</sup> and Ridge. Since that time, Kansas Department of Transportation (KDOT) has determined that I-235 will be widened in the future.

**Analysis:** To address the future widening of I-235 Freeway, additional work is required. A preliminary design of the widening of I-235 within the project limits will be completed to check clearances and to satisfy KDOT that the 13<sup>th</sup> Flyover improvements will not prohibit the widening of I-235 in the future. Supplemental Agreement No.3 has been prepared to address this work.

**Financial Considerations:** The fee for the break-in-access study was \$878,514. Supplemental Agreement No. 1 for the project design was \$3,819,262 and Supplemental Agreement No. 2 was \$521,369. The fee for Supplemental Agreement No. 3 is \$23,861 for a total of \$5,243,006. Funding is available within the existing budget.

**Goal Impact:** This agreement addresses the Efficient Infrastructure goal by providing a vital connection from I-235 By-pass to west Wichita.

**Legal Considerations:** Supplemental Agreement No. 3 has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve Supplemental Agreement No. 3.

**Attachments:** Supplemental Agreement No. 3.

SUPPLEMENTAL AGREEMENT NO. 3

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED JULY 21, 2009

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

HNTB CORPORATION

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated July 21, 2009) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to the **I-235 FLOODWAY CROSSING** (Project No. 472 84936, OCA No. 770002).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

**A. PROJECT DESCRIPTION**

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

**I-235 FLOODWAY CROSSING  
(Phase II – Plan Development).**  
(see Attachment "A")

**B. PAYMENT PROVISIONS**

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement is a cost plus, not to exceed \$23,861.00.

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, Director of Law

HNTB CORPORATION

\_\_\_\_\_  
(Name and Title)

ATTEST:

\_\_\_\_\_

# HNTB

May 8<sup>th</sup>, 2012

Mr. Michael Jacobs, P.E.  
City of Wichita  
Department of Public Works  
455 N Main, 7<sup>th</sup> floor  
Wichita, KS 67202

**RE:   Wichita Project No. 472-84817**  
      **I-235 Floodway Crossing**

Dear Mr. Jacobs:

As requested, we are pleased to submit to you this Supplemental Agreement for the I-235 Floodway Project. HNTB shall provide engineering services to create a preliminary plan set to depict geometrical revisions to accommodate a future widening of I-235 through the existing spiral curve in the area of the proposed 13<sup>th</sup> St interchange. This plan set is for documentation purposes only and is preliminary in nature and not for construction. It will be appended to the I-235 Floodway Crossing Phase III Final plans at the request of KDOT.

The Scope of Services (Attachment A) and Fee Summary (Attachment B) have been included for your records.

This supplemental agreement will increase the maximum contract fee by \$23,861 from \$4,340,631 to \$4,364,492.

We propose to complete the work outlined in attachments A and B on or before June 29, 2012. At your earliest convenience, we request a Notice to Proceed to begin this task.

Please contact us if you have any questions or concerns.

Sincerely,



Kevin Wallace, P.E.  
Vice President

cc: Kyle Schomaker, P.E.  
File

**SCOPE OF SERVICES**  
**Supplement #3**  
***I-235 Floodway Crossing***  
***Wichita Project No. 472-84817***

Supplement #3 consists of the following new scope task:

- Future widening of I-235 preliminary plan set to be appended to the I-235 Floodway Crossing Phase III final plan submittal.

Assumptions for this supplemental task include:

- HNTB will provide a cover sheet to provide separation and a "not for construction" disclaimer as well as a brief summary explaining the reason and use for the appended preliminary plan set.
- HNTB will provide typical sections (2 maximum) of the future I-235 widened section, widened toward the median. Assume 12' lane and 10' median shoulder with barrier protection. Proposed pavement section will not be designed or depicted in typical sections. They will show finished grade surface only and will employ standard KDOT cross slopes and superelevations based on current standards and practices.
- HNTB will provide 1-100 Scale plan sheet showing Phase III project as existing topo and the limits of reconstruction from normal crown to normal crown to replace the existing spiral curve with circular curves on independent alignments to minimize impact to new ramp connections and maintain 16.5' of vertical clearance under the flyover bridge and the median pier.
- HNTB will provide an updated profile of both NB and SB I-235 to maintain adequate vertical clearance and optimize the use of existing and proposed pavement, grading, and interchange connections.
- This appended plan set will be for information only and will not be used for construction. It is for documentation purposes to depict a possible solution to widen I-235 in the future without having to modify the Phase III proposed flyover bridge and median pier.
- Any required revisions to interchange gores will be depicted in plan only and will not include gore layout and cross slope transition details.



- Full Superelevation will be depicted in a typical section located near the median pier. Full super cross slopes will be provided based on today's design standards, but transition lengths at each end of the curves will not be designed. A 300' length will be provided as an estimate of required transition length beyond the P.C. and P.T. of each curve.
- No cross sections will be provided as part of this submittal.
- No quantities will be provided as part of this submittal.
- Median drainage will not be considered or accounted for as part of these plans. Conflicts with existing median drainage structures will be ignored and the necessity for median inlets and drainage structures due to barrier on low side of superelevation as well as reduced capacity in the median area will not be designed or depicted.
- Location and details of any potentially required barrier transitions, guardrail revisions, or potential roadway lighting will not be designed or depicted.
- Any potential utility impacts due to future widening of I-235 will not be addressed.

## **Phase II – Engineering Design and Plan Development**

### **Task 14. I-235 Future Widening**

#### **I-235 Future Widening Appended Informational Plan Set – New Task**

- 14.1 Develop cover sheet for appended plan set and include description of set, reason for inclusion, and disclaimer (Assumes 1 sheet).
- 14.2 Develop typical sections for the normal and superelevated I-235 future widening sections (assumes 2 sections on 1 sheet) assuming widening will be to the inside with one additional 12' lane and a 10' inside shoulder with a barrier.
- 14.3 Develop independent horizontal geometry for NB and SB I-235 through the existing spiral curve area, keeping footprint of pavement outside of proposed flyover median pier and optimizing location to minimize impact to 13<sup>th</sup> St interchange ramp connections.
- 14.4 Develop 100 scale plan sheet (assumes 1 plan sheet) depicting future I-235 widening towards the median with the assumption that Phase III project has been completed and is part of existing topography. Include proposed geometry and curve data information. Update base files such

as edge of pavement lines and existing topography to reflect Phase III completion.

- 14.5 Develop independent vertical geometry for NB and SB I-235 through the existing spiral curve area to the extent of pavement reconstruction limits, minimizing grade changes as much as possible while maintaining 16.5' vertical clearance under Phase III flyover bridge and optimizing location to minimize impact to 13<sup>th</sup> St interchange ramp connections.
- 14.6 Develop profile sheets (assumes 2 maximum profile sheets) depicting future vertical geometry, grades, and standard vertical curve information.
- 14.7 Perform quality review of I-235 Future Widening appended plan set prior to submittal to KDOT for review and approval.
- 14.8 Meet with KDOT to discuss their review comments (Assumes 1 conference call).
- 14.9 Make corrections as needed to set and create final submittal package to be appended to Phase III final plans.
- 14.10 Coordinate with City of Wichita and KDOT and general management of work, budget, and schedule.

## **PROJECT DELIVERABLES**

### **Deliverables Provided by HNTB Corporation**

#### **Plans**

- 1. Plan Deliverables (I-235/13<sup>th</sup> St Interchange Project)
  - Cover Sheet (1 sheet)
  - Typical Sections (1 sheet)
  - Plan & Profile Sheets (3 sheets)

## **Phase II - Engineering Design and Plan Development**

## FEE SUMMARY

Direct Labor	Manhours	Total
Task 14 - I-235 Future Widening		
<i>I-235 Future Widening Appended Plan Set</i>	183	\$7,887
<b>TOTAL DIRECT LABOR</b>	183	\$7,887

<b>Subtotal Direct Labor and Overhead</b>	<b>3.0</b>	<b>\$23,661</b>
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Expenses	Amount
Printing/Plotting/Reproduction	\$200

**SUBTOTAL EXPENSES:** **\$200**

<b>TOTAL (Direct Labor, Overhead, and Expenses)</b>	<b>\$23,861</b>
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I-235 Floodway Crossing  
Fee Summary and Task Breakout  
Supplement #3  
Phase II - Engineering Design and Plan Development

Date Printed : 5/8/2012

	Hours	Rate	Total
<b>Task 14 - I-235 Future Widening</b>			
<i>I-235 Future Widening Appended Plan Set</i>			
Project Management	33	\$55.00	\$1,815
Engineer	72	\$46.00	\$3,312
Technician	72	\$35.00	\$2,520
Clerical	6	\$40.00	\$240
<b>Subtotal</b>	<b>183</b>		<b>\$7,887</b>
<b>TOTAL</b>	<b>183</b>		<b>\$7,887</b>

**I-235 Floodway Crossing**  
**Fee Summary and Task Breakout**  
**Supplement #3**  
**Phase II - Engineering Design and Plan Development**

Date Printed : 5/8/2012

**Task Breakout: Manhours**

Items		Proj. Mgmt.	Engineer	Tech	Clerical	TOTAL
<b>Task 14 - I-235 Future Widening</b>						
	<i>I-235 Future Widening Appended Informational Plan Set</i>					
14.1	Develop cover sheet	1	4	4		9
14.2	Develop typical sections	1	8	16		25
14.3	Develop horizontal geometry	2	16	4		22
14.4	Develop plan sheet	2	12	24		38
14.5	Develop vertical geometry	2	16	4		22
14.6	Develop profile sheets	2	8	16		26
14.7	QA/QC	4	2			6
14.8	KDOT review meeting	2	2			4
14.9	Address comments and final submittal	1	4	4		9
14.10	Coordination and Management	16			6	22
	<b>Subtotal</b>	<b>33</b>	<b>72</b>	<b>72</b>	<b>6</b>	<b>183</b>

**CITY OF WICHITA**  
**City Council Meeting**  
**June 5, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Payment for Settlement of Claim

**INITIATED BY:** City Council

**AGENDA:** Consent

---

**Recommendation:** Authorize payment of \$12,000 as a full settlement for all claims arising out of an automobile accident.

**Background:** This claim arises from a traffic accident which occurred on December 17, 2009. The claim alleges that a Wichita police officer was negligent in the operation of his vehicle when it rear-ended a vehicle driven by Reem A. El-Abdullah. At the time of the accident, Rudy Gutierrez was an unrestrained passenger in the police vehicle. It is alleged that Mr. Gutierrez incurred physical injuries as a result of the accident.

**Analysis:** The claimant has agreed to accept a lump sum payment of \$12,000 as full settlement of all his claims against the City of Wichita and its employee. Because of the uncertainty and risk of an adverse judgment at trial, the Law Department recommends the settlement. The settlement of this claim does not constitute an admission of liability on the part of the City or the employee; rather it is merely a settlement to resolve a disputed claim.

**Financial Considerations:** Funding for this settlement payment is from the City's Tort Claims Fund.

**Legal Considerations:** The Law Department recommends settlement of this claim for the amount of \$12,000.

**Recommendations/Actions:** It is recommended that the City Council authorize payment of \$12,000 as full settlement of all possible claims arising out of the events which are the subject of this claim.

**Attachments:** None

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Purchase Option (Kansas Masonic Home) (District VI)

**INITIATED BY:** Office of Urban Development

**AGENDA:** Consent

---

**Recommendation:** Adopt the Resolution and approve the necessary signatures.

**Background:** In 1993, the City Council approved the issuance of \$8,700,000 in Industrial Revenue Refunding and Improvement Bonds for the Kansas Masonic Home to refinance 1987 bonds and finance the expansion of and improvements to the Wichita facility at Maple and Seneca. In 1997, the City Council approved the issuance of \$6,000,000 in Health Care Facilities Improvement Revenue Bonds to finance expansion of and improvements to the facility.

The Kansas Masonic Home is a not-for-profit corporation supported by approximately 34,000 members of the Order of the Eastern Star of Kansas. The services of the Kansas Masonic Home are provided in a geographic area mainly comprised of Sedgwick, Butler, Harvey, Cowley, Reno, Kingman and Sumner Counties in Kansas. The Kansas Masonic Home is a nursing care provider and retirement facility which operates three main programs: (1) licensed extended care and skilled nursing care center; (2) a home health care program serving the elderly in the Wichita metro area; and (3) an independent living facility.

The City received notice from Kansas Masonic Home of its intention to exercise the IRB purchase option and requests approval of the deed back of the IRB-financed property.

**Analysis:** Under the provisions of the IRB Lease between Kansas Masonic Home (“Tenant”) and the City, the Tenant has the option, if all outstanding bonds and fees have been, or will be paid, to purchase the facilities from the City of Wichita for the sum of \$1,000. The Trustee intends to redeem the bonds on July 5, 2012 or as soon thereafter as is practicable.

**Financial Considerations:** The City has received payment of the \$1,000 purchase option price required by the Lease Agreement. There are no fiscal impacts to the City as a result of the purchase option.

**Goal Impact:** Economic Vitality and Affordable Living. Cooperating with the Tenant and Trustee on IRB issues is a necessary part of preserving the credibility and integrity of the City’s IRB program for future projects.

**Legal Considerations:** The City is required to convey the IRB Project property to the Tenant once all the conditions established in the Lease have been met. The Resolution authorizing execution of the Special Warranty Deed and Termination of Lease Agreement and the delivery of such documents have been approved as to form by the Law Department.

**Recommendation/Actions:** It is recommended that the City Council adopt the Resolution approving the Special Warranty Deed and Termination of Lease Agreement to convey the property to Kansas Masonic Home and authorize the necessary signatures.

**Attachments:** Resolution, Special Warranty Deed, Termination and Release of Lease Agreement

## **RESOLUTION NO. 12-124**

### **A RESOLUTION AUTHORIZING THE CITY OF WICHITA, KANSAS, TO PROVIDE NOTICE OF REDEMPTION OF THE CERTAIN OUTSTANDING INDUSTRIAL REVENUE BONDS ISSUED FOR THE KANSAS MASONIC HOME AND AUTHORIZING THE CONVEYANCE OF CERTAIN PROPERTY AND THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION WITH THE EXERCISE OF A PURCHASE OPTION BY THE KANSAS MASONIC HOME.**

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has issued its Industrial Revenue Refunding and Improvement Bonds, Series III, 1993 (The Kansas Masonic Home Project) (the "1993 Bonds"), pursuant to Ordinance No. 42-087 passed on May 25, 1993, and its Health Care Improvement Industrial Revenue Bonds, Series VI, 1997 (The Kansas Masonic Home) (the "1997 Bonds"), pursuant to Ordinance No. 43-528 passed on July 15, 1997; and

WHEREAS, the 1993 Bonds and the 1997 Bonds (collectively, the "Bonds") were issued under a Trust Indenture with Commerce Bank (successor to Union National Bank of Wichita), as trustee (the "Trustee"), dated as of December 1, 1987 (the "1987 Indenture"), as supplemented by a Supplemental Trust Indenture dated as of June 1, 1993 (the "1993 Indenture Supplement"), and a Second Supplemental Trust Indenture dated as of July 1, 1997 (the "1997 Indenture Supplement;" the 1987 Indenture, the 1993 Indenture Supplement and the 1997 Indenture Supplement are referred to collectively herein as the "Indenture"); and,

WHEREAS, under the terms of the Indenture, the Bonds are subject to redemption at the option of the City upon instructions from The Kansas Masonic Homes (the "Tenant"); and,

WHEREAS, the Tenant has requested the City to approve a call for early redemption of all of the outstanding Bonds for payment on July 5, 2012, or as soon thereafter as is practical pursuant to the applicable provisions of the Indenture and the terms of this Resolution; and

WHEREAS, the proceeds of the Bonds financed a portion of the cost of a certain real property and improvements (the "Project") which is leased by the City to the Tenant pursuant to a Lease dated as of December 1, 1987 (the "1987 Lease"), as supplemented by a Supplemental Lease dated as of June 1, 1993 (the "1993 Lease Supplement"), and a Second Supplemental Lease Agreement dated as of July 1, 1997 (the "1997 Lease Supplement;" the 1987 Lease, the 1993 Lease Supplement and the 1997 Lease Supplement are referred to collectively herein as the "Lease"); and

WHEREAS, the City assigned certain of its interests in the Lease to the Trustee pursuant to an Assignment of Lease dated December 16, 1987, an Assignment of Supplemental Lease dated as of June 17, 1993, and an Assignment of Second Supplemental Lease dated July 22, 1997; and



WHEREAS, the Tenant has provided notice to the City: (a) to instruct the Trustee to redeem all of the outstanding Bonds on July 5, 2012, or as soon thereafter as is practicable (the “Redemption Date”), and (b) that it intends to exercise its option to purchase the Project on the Redemption Date; and

WHEREAS, Sections 303 through 306 of the 1987 Indenture, Section 3.01 of the 1993 Indenture Supplement and Section 301 of the 1997 Supplemental Indenture as reformed by the Journal Entry of Judgment dated February 28, 2012, of the District Court of the Eighteenth Judicial District, Sedgwick County, Kansas, provide that the Bonds may be redeemed upon compliance with the provisions in the Indenture including receipt of not less than 45 days notice of redemption by the Trustee and not less than 30 days notice of redemption by the owners of the Bonds; and

WHEREAS, the Trustee has indicated its intent to waive the notice time period set forth in the Indenture to permit the redemption of the Bonds on the Redemption Date; and

WHEREAS, Article XVII of the 1987 Lease and Article XI of the 1997 Supplemental Lease provide that the Tenant may exercise its option to purchase the Project at any time upon compliance with the provisions in the Lease including receipt of not less than 30 days notice of the intent to exercise such option by the City; and

WHEREAS, the Tenant has requested the City waive any further notice of the redemption of the Bonds and exercise of the purchase option, execute a Special Warranty Deed conveying the Project to the Tenant in accordance with the provisions of the Lease and to execute a Termination and Release of Lease among the City, the Trustee and the Tenant; and

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:**

**Section 1.** Subject to the conditions in this Section, the City hereby consents to the proposed redemption of the Bonds on the Redemption Date, waives any further notice of the redemption of the Bonds and elects to exercise the option to redeem the Bonds. The notice of redemption of the Bonds shall not be delivered to the Trustee until the City receives (a) written confirmation from that the Trustee that it waives any further notice of the redemption of the Bonds and (b) notification from INTRUST Bank, N.A. (the “Lender”), Tenant’s lender, that it has received an appraisal of the Project and a commitment for title insurance for the Project that is satisfactory to it for purposes of a loan to be made by Lender to the Tenant to provide funds to redeem the Bonds.

**Section 2.** Subject to conditions in this Section, the City hereby waives any further notice of the exercise of the Tenant’s option to purchase the Project on the Redemption Date, and the Mayor is hereby authorized and directed to execute and deliver a Special Warranty Deed and Termination and Release of Lease (the “Purchase Option Documents”) in substantially the forms on file with the City Clerk, with such corrections or amendments thereto as the Mayor may approve, which approval shall be evidenced by his execution thereof, and to execute such other

documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Resolution. The City Clerk is hereby authorized and directed to attest the execution of the Purchase Option Documents and execute or attest such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Resolution under the City's official seal.

The Purchase Option Documents shall not be released until the City receives: (a) a certification from the Trustee to the effect that the Bonds have been cancelled in accordance with the Indenture on the Redemption Date, (b) receipt by the City Clerk of a check to the City from the Tenant in the amount of \$1,000 for the purchase option price; (c) receipt by the Trustee and the City's bond counsel, Kutak Rock LLP ("Bond Counsel") of payment from the Tenant of any fees and expenses related to the redemption of the Bonds and exercise of the purchase option under the Lease; and (d) such further certifications that the City Attorney or Bond Counsel may reasonable require.

**Section 3.** Any and all fees and expenses in connection with the redemption of the Bonds will be provided from funds of the Tenant or funds properly available from the existing Indenture accounts. Nothing herein contained shall obligate the City in any manner in connection with the cost of the redemption of the Bonds.

**Section 4.** The Mayor and City Clerk are hereby authorized and directed to take such further actions not inconsistent herewith as may be necessary to carry out the purposes contemplated by this Resolution, including the execution of a notice of redemption to be provided to the Trustee.

**Section 5.** This Resolution shall be in full force and effect from and after its adoption by the Governing Body of the City.

**ADOPTED** by the Governing Body of the City of Wichita, Kansas, this June 5, 2012.

CITY OF WICHITA, KANSAS

(Seal)

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

---

Gary E. Rebenstorf, Director of Law

## **TERMINATION AND RELEASE OF LEASE**

THIS TERMINATION AND RELEASE OF LEASE dated as of \_\_\_\_\_, 2012, by and among the City of Wichita, Kansas, a municipal corporation (the "City"), The Kansas Masonic Home, a Kansas not-for-profit corporation ("Tenant") and Commerce Bank, a Missouri banking corporation (as successor Trustee to Union National Bank of Wichita) (the "Trustee");

### **W I T N E S E T H:**

WHEREAS, the City heretofore leased to the Tenant certain real property and improvements pursuant to a Lease dated as of December 1, 1987 (the "1987 Lease"), as supplemented by a Supplemental Lease dated as of June 1, 1993 (the "1993 Lease Supplement"), and a Second Supplemental Lease Agreement dated as of July 1, 1997 (the "1997 Lease Supplement;" the 1987 Lease, the 1993 Lease Supplement and the 1997 Lease Supplement are referred to collectively herein as the "Lease"); and

WHEREAS, notices of the 1987 Lease, the 1993 Lease Supplement and the 1997 Lease Supplement were recorded with the Register of Deeds of Sedgwick County as a Notice of Lease on \_\_\_\_\_, 1987 on \_\_\_\_\_, a Notice of Supplemental Lease on June 24, 1993, on Film 1305, Page 027, and a Notice of Second Supplemental Lease on July 23, 1997, on Film 1709, Page 1205 (collectively, the "Notice of Leases"); and

WHEREAS, certain interests of the City under the Lease were assigned to the Trustee which assignments were recorded with the Register of Deeds of Sedgwick County as an Assignment of Lease on \_\_\_\_\_, 1987, on \_\_\_\_\_, an Assignment of Supplemental Lease on \_\_\_\_\_, 1993, on \_\_\_\_\_ and an Assignment of Second Supplemental Lease on August 19, 1997, on Film 1716, Page 0968 (collectively, the "Assignments of Lease"); and,

WHEREAS, the property covered by the Lease consists of the "Project" described on Schedule I attached hereto; and

WHEREAS, the City previously had outstanding its Industrial Revenue Refunding and Improvement Bonds, Series III, 1993 (The Kansas Masonic Home Project) and its Health Care Improvement Industrial Revenue Bonds, Series VI, 1997 (The Kansas Masonic Home) (collectively, the "Bonds"); and

WHEREAS, all outstanding Bonds have been paid in full, and no Bonds remain outstanding under the Trust Indenture dated as of December 1, 1987, as supplemented by a Supplemental Trust Indenture dated as of June 1, 1993, and a Second Supplemental Trust Indenture dated as of July 1 1997 (collectively, the "Indenture"), all by and between the City and the Trustee, authorizing and securing the Bonds; and,

WHEREAS, in connection therewith, it is necessary to provide for the release and termination of the above-described Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and in consideration of other good and valuable consideration, the parties hereto agree that the Lease, and the above described Notice of Leases and Assignments of Lease are hereby terminated and released.

IN WITNESS WHEREOF, we have hereunto set our hand and affixed the official seal of the City of Wichita, Kansas, for delivery as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF WICHITA, KANSAS

[Seal]

By: \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
  ) ss:  
COUNTY OF SEDGWICK         )

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, a notary public in and for said County and State, came Carl Brewer, Mayor of the City of Wichita, Kansas, a municipal corporation of the State of Kansas, and Karen Sublett, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Appointment Expires:

\_\_\_\_\_

THE KANSAS MASONIC HOME

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED that on this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, a notary public in and for said County and State, came \_\_\_\_\_, \_\_\_\_\_ of The Kansas Masonic Home, a Kansas not-for-profit corporation, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My appointment expires:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Notary Public

---

## SCHEDULE I

The following described real estate located in Sedgwick County, Kansas, to wit:

### TRACT 1:

A tract of land in the NE 1/4 of Section 30, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as follows: Commencing at the NE corner of said NE 1/4; thence N 89 degrees 49'W along the north line of said NE 1/4, 349.66 feet; thence S 0 degrees 00'E, 31.76 feet to a point of beginning; thence S 1 degree 51'45"E, 116.48 feet; thence S 63 degrees 23'45"W, 130.15 feet; thence S 7 degrees 59'15"E, 59.64 feet; thence S 0 degrees 13'15"W, 18.09 feet; thence S 89 degrees 47'45"E, 79.08 feet; thence S 0 degrees 32'15"W, 167.48 feet; thence N 78 degrees 38'25"W, 161.18 feet; thence N 0 degrees 07'W, 93.98 feet; thence S 89 degrees 53'SW, 1.85 feet; thence N 0 degrees 07'W, 16.25 feet; thence S 89 degrees 52'W, 33.53 feet; thence N 5 degrees 15'E, 111.05 feet; thence N 60 degrees 01'W, 125.57 feet; thence N 13 degrees 21'30"E, 104.22 feet to a point 32.71 feet south of said north line of said NE 1/4; thence N 90 degrees 00'E, 295.43 feet to the point of beginning, containing 80,114 square feet, more or less. The above described property being within the bounds of the following described property within the bounds deeded to the Kansas Masonic Home; Commencing at the NE corner of the NE 1/4 of Section 30, T27S, R1E of the 6th P.M. Running thence west 913 feet; thence south 730 feet; thence east 913 feet; thence north 730 feet to the place of beginning.

### TRACT 2:

A tract in the NE 1/4 of Section 30, Township 27-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the NE corner of said NE 1/4; thence west along the north line of said NE 1/4 with an assumed bearing of N 89°43'35"W, 349.66 feet, thence S 00°05'25"W, 31.76 feet; thence S 01°46'20"E, 116.48 feet; thence S 63°29'10"W, 130.15 feet; thence S 7°53'50"E, 56.64 feet; thence S 00°18'40"W, 18.09 feet; thence S 89°42'20"E, 79.08 feet; thence S 00°37'40"W, 167.48 feet; thence N 78°33'W, 59.10 feet for a point of beginning; thence S 00°04'31"W, 227.83 feet; thence N 89°32'22"W, 333.12 feet; thence N 30°00'34"W, 137.34 feet; thence S 89°59'30"W, 75.43 feet; thence N 00°00'30"W, 35 feet; thence N 73°02'37"E, 130.675 feet; thence N 00°00'30"W, 154.54 feet; thence N 89°56'50"E, 250.56 feet; thence S 00°01'35"E, 93.98 feet; thence S 78°33'E, 102.08 feet to the beginning; and

### TRACT 3:

A tract in the N.E. 1/4 Section 30, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as commencing at N.E. corner of said N.E. 1/4; thence west along north line of said N.E. 1/4 with an assumed bearing of N 89°43'35"W, 349.66 feet; thence S 00°05'25"W, 31.76 feet; thence S 01°46'20"E, 116.48 feet; thence S 63°29'10"W, 130.15 feet; thence S 07°53'50" E, 56.64 feet; thence S 00°18'40"W, 18.09 feet; thence S 89°42'20"E, 79.08 feet; thence S 00°37'40"W, 167.48 feet; thence N 78°33'W, 161.18 feet; thence N 00°01'35"W, 93.98 feet; thence S 89°58'25"W, 1.85 feet; thence N 00°01'35"W, 7.41 feet for a point of beginning; thence S 89°56'50"W, 250.56 feet; thence S 00°00'30"E, 154.54 feet; thence S 73°02'37"W, 130.675 feet; thence N 00°00'30"W, 467.06 feet; thence S 89°56'42"E, 265.70 feet; thence S 13°26'55"W, 94.20 feet; thence S 59°55'35"E, 125.57 feet; thence S 5°20'25W, 111.05 feet; thence N 89°57'25"E, 33.53 feet; thence S 00°01'35"E, 8.84 feet to the point of beginning.



All buildings and improvements now or hereafter constructed, located or installed upon the above-described property and purchased in whole or in part from the proceeds of the Bonds.

**A Real Estate Sales Questionnaire is not required because this deed is made solely for the purpose of securing or releasing security for a debt or other obligation. See K.S.A. 79-1437e(a)(2).**

**When Recorded Return to:**

The Kansas Masonic Home  
401 South Seneca  
Wichita, Kansas 67213  
Attn: President

**SPECIAL WARRANTY DEED**

THIS INDENTURE, made this \_\_\_\_\_, 2012, by and between the City of Wichita, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas and located in Sedgwick County, Kansas (the “Grantor”), and The Kansas Masonic Home, a Kansas not for profit corporation (the “Grantee”).

WITNESSETH: That Grantor, in consideration of the sum of One Thousand Dollars (\$1,000) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents grant, bargain, sell and convey to Grantee, its successors and assigns, all of Grantor’s interest in the property situated in Sedgwick County, Kansas, specifically described on Schedule I attached hereto and incorporated hereby.

Grantor hereby covenants that its interest as conveyed hereby is conveyed free and clear of all liens and encumbrances except (i) those liens and encumbrances to which title to the described property was subject when conveyed to Grantor; (ii) those liens and encumbrances created by the Grantee or its predecessor or to the creation or suffering of which the Grantee or its predecessor has consented; (iii) those liens and encumbrances resulting from the failure of the Grantee or its predecessor to perform and observe any of the agreements on its part contained in the Lease under which it has heretofore occupied the described property; (iv) the rights of the public in and to any part of the described property lying or being in public roads, streets, alleys or highways; (v) any unpaid taxes or assessments, general or special; (vi) the restriction that no existing building nor any building which is constructed or placed upon the property conveyed hereby, either temporarily or permanently, shall be used for housing the operation of any multi-game casino-style gambling; and (vii) the rights, titles and interests of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the described property; and further covenants that it will warrant and defend the same in the quiet and peaceable possession of Grantee, its successors and assigns, forever, against all persons claiming the same through Grantor.

IN WITNESS WHEREOF, we have hereunto set our hand and affixed the official seal of the City of Wichita, Kansas, for delivery as of the date first written above.

CITY OF WICHITA, KANSAS

By: \_\_\_\_\_  
Carl Brewer, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

ACKNOWLEDGMENTS

STATE OF KANSAS            )  
  )       ss:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED that on this \_\_\_\_\_, 2012, before me, a notary public in and for said County and State, came Carl A. Brewer, Mayor of the City of Wichita, Kansas, a municipal corporation of the State of Kansas (the "City"), and Karen Sublett, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Appointment Expires:

\_\_\_\_\_

## SCHEDULE I

The following described real estate located in Sedgwick County, Kansas, to wit:

### TRACT 1:

A tract of land in the NE 1/4 of Section 30, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as follows: Commencing at the NE corner of said NE 1/4; thence N 89 degrees 49' W along the north line of said NE 1/4, 349.66 feet; thence S 0 degrees 00' E, 31.76 feet to a point of beginning; thence S 1 degree 51'45" E, 116.48 feet; thence S 63 degrees 23'45" W, 130.15 feet; thence S 7 degrees 59'15" E, 59.64 feet; thence S 0 degrees 13'15" W, 18.09 feet; thence S 89 degrees 47'45" E, 79.08 feet; thence S 0 degrees 32'15" W, 167.48 feet; thence N 78 degrees 38'25" W, 161.18 feet; thence N 0 degrees 07' W, 93.98 feet; thence S 89 degrees 53' SW, 1.85 feet; thence N 0 degrees 07' W, 16.25 feet; thence S 89 degrees 52' W, 33.53 feet; thence N 5 degrees 15' E, 111.05 feet; thence N 60 degrees 01' W, 125.57 feet; thence N 13 degrees 21'30" E, 104.22 feet to a point 32.71 feet south of said north line of said NE 1/4; thence N 90 degrees 00' E, 295.43 feet to the point of beginning, containing 80,114 square feet, more or less. The above described property being within the bounds of the following described property within the bounds deeded to the Kansas Masonic Home; Commencing at the NE corner of the NE 1/4 of Section 30, T27S, R1E of the 6th P.M. Running thence west 913 feet; thence south 730 feet; thence east 913 feet; thence north 730 feet to the place of beginning.

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### TRACT 3:

A tract in the N.E. 1/4 Section 30, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as commencing at N.E. corner of said N.E. 1/4; thence west along north line of said N.E. 1/4 with an assumed bearing of N 89°43'35" W, 349.66 feet; thence S 00°05'25" W, 31.76 feet; thence S 01°46'20" E, 116.48 feet; thence S 63°29'10" W, 130.15 feet; thence S 07°53'50" E, 56.64 feet; thence S 00°18'40" W, 18.09 feet; thence S 89°42'20" E, 79.08 feet; thence S 00°37'40" W, 167.48 feet; thence N 78°33' W, 161.18 feet; thence N 00°01'35" W, 93.98 feet; thence S 89°58'25" W, 1.85 feet; thence N 00°01'35" W, 7.41 feet for a point of beginning; thence S 89°56'50" W, 250.56 feet; thence S 00°00'30" E, 154.54 feet; thence S 73°02'37" W, 130.675 feet; thence N 00°00'30" W, 467.06 feet; thence S 89°56'42" E, 265.70 feet; thence S 13°26'55" W,

94.20 feet; thence S  $59^{\circ}55'35''$ E, 125.57 feet; thence S  $5^{\circ}20'25''$ W, 111.05 feet; thence N  $89^{\circ}57'25''$ E, 33.53 feet; thence S  $00^{\circ}01'35''$ E, 8.84 feet to the point of beginning.

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** National Recreation and Park Association (NRPA) Food Grant Program  
(Districts I, II, III, VI)

**INITIATED BY:** Department of Park and Recreation

**AGENDA:** Consent

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**Recommendation:** Authorize the Department of Park and Recreation staff to accept the Grant for \$50,000, approve the Memorandum of Understanding with NRPA and authorize all necessary signatures.

**Background:** The Department of Park and Recreation offers an eight week Summer Activity Camp for Kids and a ten week Summer of Discovery Camp program. These programs are offered at locations listed below and most participate in the Summer Lunch Program sponsored by USD 259. The programs operate Monday through Friday at various times throughout the day. Most sites serve low income neighborhoods and are licensed by Kansas Department of Health and Environment.

**Summer Activity Camp Locations:**

Lynette Woodard Recreation Center (District I)  
Colvin Recreation Center (District III)  
Evergreen Recreation Center (District VI)

**Summer of Discovery Locations:**

Linwood Recreation Center (District I)  
Orchard Recreation Center (District VI)  
Edgemoor Recreation Center (District I and II)

**Analysis:** The NRPA received a grant from the Wal-Mart Foundation and the Kansas Health Foundation and has invited the Wichita Park and Recreation Department to once again participate in the nation-wide program designed to promote and increase participation in summer lunch programs. The NRPA is working with national partners to eliminate child hunger. As the largest public provider of children's meals during the summer months, park and recreation agencies are capable of quickly and effectively reaching children in need with nutritious meals. In fact, park and recreation agencies are on the frontline in addressing many community health needs, including children's nutrition. The Wichita Park and Recreation Department will benefit from the grant funding by providing an established curriculum in healthy eating to the children, funding for small Children's Gardens at each site and cooking classes for the children.

**Financial Considerations:** The Grant is for \$50,000 of which \$39,800 will be cash to the City and \$10,200 is for in-kind materials provided by the Grantor for an eight (8) week curriculum on healthy eating. The City will staff six (6) Activity Camps where they will administer the eight (8) week healthy eating curriculum, create small temporary "Children's Farms/Gardens", and provide related field trips (Botanica). The City staff will report successes of the program to the Grantor. There is no City match requirement.

**Goal Impact:** Accepting this grant will improve the Quality of Life for families and their children.

**Legal Considerations:** The Law Department has reviewed and approved the Memorandum of Understanding with NRPA as to form.

**Recommendation/Action:** It is recommended that the City Council authorize the Park and Recreation Department staff to accept the Grant for \$50,000, approve the Memorandum of Understanding with NRPA and authorize all necessary signatures.

**Attachment:** Memorandum of Understanding.

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Community Event with alcohol consumption – Resolution - LIV Music and Arts Festival (District VI)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the Resolution.

**Background:** A community event application that includes a request for alcoholic liquor consumption has been submitted for the LIV Music and Arts Festival, scheduled for Friday, June 15, 2012 from 3:00 p.m. to 12:00 midnight and on Saturday, June 16, 2012 from 11:00 a.m. to 12:00 midnight. This event necessitates the creation of a temporary entertainment district (TED), which is required by state law in order to allow the consumption of alcoholic liquor within the event boundaries, which includes streets and sidewalks. Specifically, K.S.A. 41-719 requires that an event applicant obtain a temporary permit for the sale of alcoholic liquor from the state, that the roadway be closed to traffic, and that the event be approved by the city council.

In accordance with Sections 3.11.065(d) and 3.11.150(a) of the Code of the City of Wichita and the Community Events Procedure. Staff is requesting that the attached resolution be approved which authorizes consumption of alcoholic liquor on sidewalks and on public streets within the TED that is located along Broadway Street, Douglas Avenue to Second Street and First Street, Market Street to Topeka Street, which have been closed to motor vehicle traffic during such licensed community event. The event boundaries were determined by event organizers as required by the City ordinance. Event organizers are required to submit a map and diagram of the event boundaries to the City with their completed community event application.

Upon review of the community event application for this event, a copy of which is attached hereto, and upon consideration of the factors set forth in Sections 3.11.080 and 3.11.150(b) of the code of the City of Wichita, the Council shall determine if such approval should be given.

**Analysis:** Staff has reviewed the application for the community event with consumption of alcoholic liquor allowed, and based upon the factors set forth in Sections 3.11.080 and 3.11.150(b) of the City Code, finds that all of the criteria set forth therein have been met and recommends approval of the event permit.

**Financial Consideration:** The event sponsor is responsible for all costs associated with special events.

**Goal Impact:** Approval of this Resolution as part of the LIV Music and Arts Festival will Enhance the Quality of Life.



**Legal Consideration:** The Law Department has prepared and approved the Resolution as to form.

**Recommendation/Actions:** It is recommended that the City Council approve the Resolution.

**Attachments:** Resolution and Community Event Application for the LIV Music and Arts Festival.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CONSUMPTION OF ALCOHOLIC LIQUOR  
ON PUBLIC STREETS DURING THE LIV MUSIC AND ARTS FESTIVAL**

WHEREAS, the City Council has approved as a community event , the LIV Music and Arts Festival, to occur on June 15, 2012, from 3:00 p.m. to 12:00 midnight and on June 16, 2012 from 11:00 a.m. to 12:00 midnight.

WHEREAS, the City Council has approved certain streets to be closed to vehicular traffic for such event as follows:

- (1) Broadway Avenue from First Street to Second Street from 12:00 noon on Friday, June 15<sup>th</sup> until 2:00 a.m. on Sunday, June 17<sup>th</sup>;
- (2) Broadway Avenue from First Street to Douglas Avenue from 4:00 p.m. on Friday, June 15<sup>th</sup> until 2:00 a.m. on Sunday, June 17<sup>th</sup>; and
- (3) First Street from Market Street to Topeka Avenue from 4:00 p.m . on Friday, June 15<sup>th</sup> until 2:00 a.m. on Sunday, June 17<sup>th</sup>.

WHEREAS, a temporary permit for the consumption of alcoholic liquor at the LIV Music and Arts Festival has been applied for and will be issued by the State of Kansas and the City of Wichita upon the presentation of this Resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council, pursuant to Section 3.11.065(d) of the Code of the City of Wichita, and in consideration of the factors set forth in Section 3.11.080 of the Code of the City of Wichita, grants its approval for the consumption of alcoholic liquor on the city streets, sidewalks and public right of ways which are located within the designated event area of the LIV Music and Arts Festival to occur on June 15, 2012, from 3:00 p.m. to 12:00 midnight and on June 16, 2012 from 11:00 a.m. to 12:00 midnight.

**ADOPTED** by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_day of \_\_\_\_\_, 2012.

**CITY OF WICHITA, KANSAS**

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

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Karen Sublett  
City Clerk

Approved as to Form:

---

Gary E. Rebenstorf  
Director of Law



4/20/2012

## **COMMUNITY EVENT APPLICATION** **and Temporary Entertainment District Application**

Applications and applicable fees must be submitted to:

**Division of Arts & Cultural Services | 225 West Douglas | Wichita, KS 67202**  
**(W) 316-303-8630 (F) 316-858-7960 [csclark@wichita.gov](mailto:csclark@wichita.gov)**

**Completion of a Community Event Application is required when the following conditions apply:**

*The City of Wichita defines a Community Event as follows:*

- Outdoor event on public and/or private property
- Attendance in excess of 100 persons on public property and/or 250 persons on private or park property.  
*Excludes invitation only events taking place on private property.*
- Involves a particular purpose and time.
- **If Alcoholic Liquor or Cereal Malt Beverage is to be served or sold at an event, all portions of this application necessary to either establish a Temporary Entertainment District (for alcoholic liquor) or to obtain written City Council approval (for CMB) MUST be completed.**

**Any or all conditions below may apply to a Community Event:** Some conditions may require a separate permit, which might include City Council approval. The Community Event Ordinance 3.11, Municipal Codes and Licensing applications can be accessed from [www.wichita.gov](http://www.wichita.gov) under the Business tab or by request to the Community Event Coordinator.

### **General Information:**

The City of Wichita may refuse any application received less than 45 days before the event or lacking requested information. Applications received less than 30 days, but more than 10 business days prior to the proposed event will be assessed additional fees. **NO application will be accepted LESS THAN 10 business days prior to the proposed event.** Any information required by the application must be complete upon submittal. Incomplete applications may be denied. When received, an application is subject to approval of all departments involved and will be required to provide the following:

- Application filing fee (\$25) made payable to City of Wichita.
- Licensing fee (varies) made payable to the City of Wichita.
- Street closure request (\$25.00 *if applicable*) made payable to the City of Wichita.
- Certificate of Liability Insurance naming the City of Wichita as additionally insured.
- Site plan defining the placement of alcohol point of sale, barricade locations, exit location, trash, restrooms, signage, etc.
- Security requirements including hiring of certified law enforcement officers.
- Vendor list including contact person and contact information.

Application Date: 4/20/12

Event Title: LIV Music + Arts Festival

Event Date(s)/Time: June 15-16 (3p-12p on 6/15, 11a-12p on 6/16)



4/20/2012

Event Address for Permit: 200 N. Broadway, Wichita, KS 67202

Property (Circle all that apply):

Public

Park

Private

Event Promoter Name: Orpheum Theatre (contact: Adam Hartke)

Address: 200 N. Broadway, Wichita, 67202

Phone: (316) 771-7984 Mobile: (316) 807-4530

E-mail: orpheum@wichitaorpheum.com

Will Alcoholic Liquor or CMB be sold and/or served? (Circle one): Yes or No

Onsite Alcohol Supervisor Name: Adam Hartke

Address: 200 N. Broadway, Wichita, KS 67202

Phone: (316) 771-7984 Mobile: (316) 807-4530

E-mail: orpheum@wichitaorpheum.com

Will food be sold and/or served? (Circle One): Yes or No

Food Coordinator Name: Jenn Ray

Phone: ( ) Mobile: (316) 390-8017

E-mail: jennrayeb@yahoo.com



4/20/2012

Type of Event (Circle all that apply):

Animal Exhibition Carnival Circus Concert Dance Fireworks Live Entertainment Parade

Temporary Amusement Rides Walk/Run/Marathon Street Closure

Other \_\_\_\_\_

Attendance (circle one): Public or Private/Invitation Only

Estimated Attendance: 500-1,000

Number of participants in previous years: ~950  
(If applicable)

Will admission be charged? yes, \$20-\$25  
(If yes, what amount?)

Is this event a fundraiser? No  
(If yes, for what organization?)

Street Closure Requested? (Circle One): Yes or No

Date(s)/Time/Location of Street Closures (or attached information):

6/15/12 @ 12am to 6/17/12 @ 2pm  
(closure) (re-open)



4/20/2012

Description, Website and/or Facebook Page of Event (or attached flier):

Independent Music + Arts Festival featuring local,  
regional, & national talent

LIVFest.com

I, Adam Harkke, the above named applicant, do solemnly swear that I have read the contents of this application and that all information and answers herein contained are completed and true. In addition, I have read and understand all rules and regulations as set out in the Code of the City of Wichita. Furthermore, I hereby agree to comply with all of the laws of the State of Kansas, and all rules and regulations prescribed by the City of Wichita and I have consent to the immediate revocation of my license, by the proper officials, for any violation of such laws, rules, or regulations.

Signature of Event Applicant

Orpheum Theatre/  
LIV Music + Arts Festival

Organization/Event

[Signature]  
City of Wichita Representative

Date

4/26/12

Date

5/3/2012

## **COMMUNITY EVENT CHECKLIST** **and Temporary Entertainment District Checklist**

Checklist must accompany Application and applicable fees and mail to:  
Division of Arts & Cultural Services | 225 West Douglas | Wichita, KS 67202  
(W) 316-303-8630 (F) 316-858-7960 [csclark@wichita.gov](mailto:csclark@wichita.gov)

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- Attendance in excess of 100 persons on public property and/or 250 on private or park property. Excludes invitation only events taking place on private property.
- Involves a particular purpose and time.

Approval of all applicable departments is required before permit is issued. The applicant shall be required to provide certified law enforcement officers, portable restrooms, and trash service in adequate number as reasonably determined by the procedures set forth. All vendors must be properly licensed and inspected. The applicant shall also be required to obtain, place and remove signs and barricades to close streets in accordance with requirements of the City. The applicant is responsible for all costs associated with the community event.

The Community Event Ordinance 3.11, Municipal Codes and Licensing applications can be accessible from [www.wichita.gov](http://www.wichita.gov) under the Business tab or by request to the Community Event Coordinator.

X **1. Certificate of Insurance - Must accompany initial application**  
The applicant shall be required to **maintain insurance reasonably acceptable to the City covering all aspects of the event** in a minimum amount of \$500,000 public liability insurance and \$50,000 property damage insurance, in addition to other insurance as required by law. The insurance policies must include the City of Wichita and its agencies as additional insured.

X **2. Site Plan – Must accompany initial application**  
A Site Map/Plan and Event Notice **must be attached to application**. The site map/plan shall include: (1) streets requested for closure; (2) entry and exit points of event venue; (3) stage placement; (4) portable restroom locations; (5) trash receptacle locations; and, if applicable, (6) description of signage and barriers defining the area which alcoholic liquor or CMB may be consumed; (7) point of sale of alcoholic beverages; and (8) location of participating establishments.

X **3. Security Requirements – Minimum 15 day approval process**  
Security requirements shall be determined in coordination with the Wichita Police Department. The applicant will be required to hire certified law enforcement officers in addition to any other security the promoter provides on the event site.



**4. Traffic Flow Plan (Section 3.11.150) – Must accompany initial application**

**The plan should include any information that will impact the flow of traffic**, such as requested street closures; route for parade, run/walk, or any other request. Does not include events solely on sidewalks or public rights-of-way immediately adjacent to public streets unless alcoholic beverages are to be consumed in these areas. Applicants will be required to disclose the date, street name, location, and time period for approval of requested street closures. Please attach the traffic flow plan as part of the site map/plan. Closure for any major street requires adequate street closure equipment to include signs and barricades and certified law enforcement officers, to be provided by applicant. All affected property owners are required to be notified in writing for intended street closure and a copy of such list is to be included as part of the community event application requirements.

**Only temporary street markings are allowed and must be removed immediately upon completion of the event.**

**5. Trash Receptacles – Minimum 15 day approval process**

The number of trash containers **shall be based upon industry standards for sanitation and public convenience** and will include consideration of the type of food and packaging. Requirements will be determined on event criteria and established with contracted vendor. Trash service will include servicing during an event for four hours or more and picking up of all trash and debris during and after the event. Upon completion of the event public property shall be left in the same condition or better than received. Trash containers may be located only in areas approved on site map/plan.

**6. Portable Restrooms – Minimum 15 day approval process**

The number of portable restrooms **shall be based upon industry standards for sanitation and public convenience**. Requirements will be determined on event criteria and established with contracted vendor. The plan must provide for service during the event if planned for four hours or more. Portable restrooms may be located only in areas approved on site map/plan.

**7. Food Vendors Transient Merchant License (Chapter 3.95) - Minimum 15 day approval process**

Food vendors must be licensed and inspected through the City of Wichita. **A list of vendors including contact person and contact information must be submitted with the Community Event Application.**

**8. Transient Merchant License (Chapter 3.95) – Minimum 15 day approval process**

Transient Merchants are described as vendors selling wares or food from 7:00 am until midnight. Each vendor is required to complete a separate Transient Merchant application including signature. A copy of current Sales Tax License from the State of Kansas or proof of exempt status must accompany application. **A list of vendors including contact person and contact information must be submitted with the Community Event Application.**

~~NA~~ **9. Cereal Malt Beverage and Alcoholic Liquor Licenses (Chapter 4.12, Section 4.16.070(e) and KSA 41-2645 - Minimum 45 day approval process**

The applicant shall be responsible for compliance with CMB and Alcoholic Liquor laws as well as all other laws and ordinances in the conduct of the event. Click on the "Business" tab at the top of the Home Page then click on "City of Wichita License Applications" to locate Liquor License and/or CMB license application.

~~NA~~ **10. Cereal Malt Beverage and Alcoholic Liquor Consumption Regulations (Title 10) - Minimum 45 day approval process**

The applicant and onsite supervisor (if different) shall be responsible for compliance with all regulations as set forth in Section 3.11.065 of the City Code. **Consumption of CMB or alcoholic liquor on public streets and sidewalks is only allowed when the street is closed to vehicular traffic and with written approval of the City council.**

~~NA~~ **11. Tents and Canopies (Chapter 18.36 Ordinance 41-502) - Minimum 5 day approval process**

A Permit will be required if the tent meets one of the following: The Tent has sides and is greater than 200 square feet OR is greater than 400square feet.

If a Tent Permit is required , the applicant will be required to appear in person at the Office of Central Inspection located in City Hall on the 7th floor, 455 N Main, Wichita, KS. The following information is required to obtain the permit: (1) the address where the tent will be located; (2) written permission of the property owner; (3) the size of the tent or canopy; (4) dates of erection and duration; (5) onsite contact name and contact information.

~~NA~~ **12. Parade (Chapter 3.13.020) – Minimum 10 day approval process**

Parade route diagram and/or site map/plan must be attached to the application showing formation area, starting point and termination point.

~~NA~~ **13. Temporary Amusement Ride License (Chapter 3.20) – Minimum 30 day approval process**

Completed application must include name of approved vendor. A current copy of certificate of inspection for each ride and applicable insurance must be on file with the City of Wichita. Placement of rides must be noted on site map/plan.

~~NA~~ **14. Fireworks License – (Chapter 15.0) Minimum 30 day approval process**

Completed application must include a copy of the Firework Operator Certificate. Applicant is required to include a site map/plan of the shooting site, fallout zone, a list of shell sizes and applicable insurance.

~~NA~~ **15. Animal Exhibition License (Chapter 3.09) – Minimum 20 day approval process.**

Completed application must include USDA animal documentation, name and address of licensed veterinarian responsible for the care of the animals and proof of liability insurance.

✓ **16. Event Times - (Municipal Code Section 3.11.155)**

Outdoor entertainment may operate 8:00 am until 11:00 pm Sunday through Thursday, 8:00 am until Midnight Friday and Saturday. The applicant shall at all times be responsible for compliance with laws and ordinances regulating the times of events.

✓ **17. Noise Level – (Chapter 7.41)**

The applicant shall be required to ensure that sound levels do not exceed that which is appropriate for the event area and its location and is in compliance with the provisions the code of the City of Wichita. The applicant will respond in a timely and effective manner to requests of the city's representatives concerning the sound level. The WPD or authorized representatives of the City shall have the authority to cancel musical performances or events for substantial or repeated violations.

✓ **18. Miscellaneous**

No excavation shall be made on public property nor objects/promotional items be placed or attached to public property except as expressly approved by permit or license. The applicant shall be required to abide by such other requirements as may be reasonable for the approval of the application.

I have read and understand the above information and regulations and accept them on behalf of the following organization.

Signature of Event Applicant

LIV Music & Arts Festival

Organization/Event

[Signature]  
City of Wichita Representative

4/12/12  
Date

5/3/2012  
Date



ORPHPER-01

FIST

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

4/4/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Maury, Donnelly & Parr, Inc. Commerce & Water Streets Baltimore, MD 21202		(410) 685-4625	<b>CONTACT NAME:</b>	
			<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b>
			<b>E-MAIL ADDRESS:</b>	
			<b>INSURER(S) AFFORDING COVERAGE</b>	
			<b>INSURER A : Great American Insurance Company</b>	
			<b>INSURER B :</b>	
			<b>INSURER C :</b>	
			<b>INSURER D :</b>	
			<b>INSURER E :</b>	
			<b>INSURER F :</b>	

**INSURED**  
Orpheum Performing Arts Center LTD d/b/a Orpheum Theatre  
200 N. Broadway  
Suite 102  
Wichita, KS 67202-

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

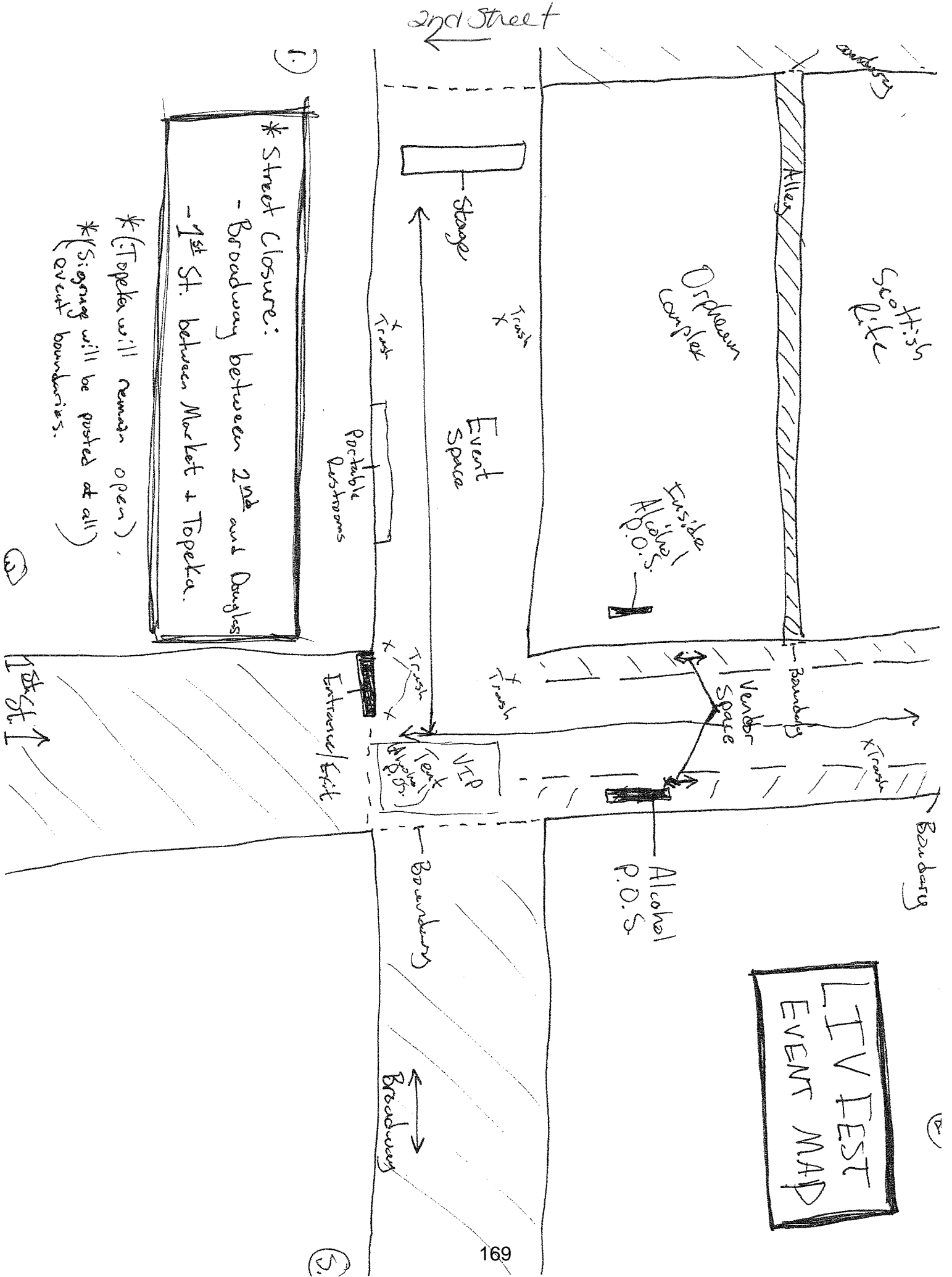
INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b>	X	PAC379352605	5/31/2011	5/31/2012	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					\$
	<b>AUTOMOBILE LIABILITY</b>					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS					PROPERTY DAMAGE (Per accident) \$
						\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input type="checkbox"/> OCCUR	UMB379352705	5/31/2011	5/31/2012	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000					\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	Y / N <input type="checkbox"/> N / A				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)					E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
The Certificate Holder is listed as an Additional Insured for the LIV Music Festival, being held on June 15th and 16th, 2012.

<b>CERTIFICATE HOLDER</b>  The City of Wichita 200 North Broadway, Suite 102 Wichita, KS 67202-	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# LIV FEST EVENT MAP



## **LIV Music & Arts Festival**

**June 15-16, 2012**

### **Street Closure Plan**

#### **Streets to be closed:**

Broadway between Douglas & 2<sup>nd</sup> Street

1<sup>st</sup> Street between Market & Topeka

#### **Closure plan:**

June 15

12am: Broadway will be closed between 1<sup>st</sup> Street and 2<sup>nd</sup> Street.

\*This closure will allow for the stage and performance area to be set up.

4pm: Broadway will be closed between 1<sup>st</sup> Street and Douglas.

First Street will be closed between Market and Topeka.

\*This closure will define the total event boundaries, and allow space for Saturday art vendors.

#### **Process of closure:**

Between 12am and 4pm on June 15, northbound traffic on Broadway will be diverted at First Street.

Southbound traffic on Broadway will be diverted at 2<sup>nd</sup> Street during these times.

Between 4pm on June 15 and 2am on June 17, northbound traffic on Broadway will be diverted at Douglas. Southbound traffic on Broadway will be diverted at 2<sup>nd</sup> Street during these times.

Between 4pm on June 15 and 2am on June 17, eastbound traffic on 1<sup>st</sup> Street will be diverted at Market.

#### **Placement of signs, cones & barricades:**

Road Closed Ahead signs will be placed the following locations: English & Broadway, William & Broadway, 1<sup>st</sup> & Water, 1<sup>st</sup> & Main, Elm & Broadway, Central & Broadway, 3<sup>rd</sup> & Broadway.

Right Turn Only signs will be placed at 2<sup>nd</sup> & Broadway, Douglas & Broadway, 1<sup>st</sup> & Broadway (between 12am & 4pm on June 15).

Left Turn Only signs will be placed at 1<sup>st</sup> & Market.

Cones to funnel traffic into one lane will be placed at the following locations: Between Main & Market on 1<sup>st</sup> Street (left turn), between William & Douglas on Broadway (right turn), between 3<sup>rd</sup> & 2<sup>nd</sup> on Broadway (right turn), between Douglas and 1<sup>st</sup> on Broadway (from 12am-4pm on June 15, right turn).

Type 3 Barricades will be placed at the following locations: 1<sup>st</sup> & Market, 2<sup>nd</sup> & Broadway, Douglas & Broadway, Douglas & 1<sup>st</sup> (from 12am-4pm on June 15).

#### **Re-open plan:**

June 17

At 2am, or before, all streets will be re-opened.

**LIV Music & Arts Festival**  
**June 15 & 16, 2012**  
**Food Vendor List**

The Flying Stove  
Taco Gallo

**LIV Artisan Market**  
**(For the 2012 LIV Festival, June 16)**

List of Vendors (as of 4/25):

James McClain  
Amber Hammes  
Absolute Concrete  
Annalee Tipton  
Barbara Vogt  
Jason Franz  
Molly Noon  
Isabelle Scroggie  
Bruce Bentley  
Jelena Louie  
Collin Allen  
Cort Anderson  
Cozy Critters  
Tammy Withrow  
Frank Newingham  
Danielle Davis  
Eloyce Meis  
Embellishmnets  
Heather Faye  
Amy Youn  
Kayann Ausherman  
Georgia Andersen  
Sara Hewlett  
Honeybomb Productions  
Karen Hinz  
J& K Creations  
Jakie McElroy  
Jamie Main & Kate Hanna  
Jan Green & Tammara Barnes  
Judy Lawson  
Becky Miller  
Judah Hansen / Kenton Hansen  
Judith Padgett  
Karen Carney  
Kathleen Michael  
Kim Burton, Jaime Peterman, Alecia Goodman  
Kristen Akers, Seth Blume



Lacey Pierce  
Lee Shiney  
Angie Stuhlsatz  
Lori Copley  
Amber Lane  
Mandy Hupp, Jenny Wiley, Katie Ambuehl  
Michele McCawley  
Mitchell Shoe Cabinets  
An Le, Tahne Rutledge  
Jennifer Blundon  
Rachelle Ablah Pulkilla  
Jennifer Linton  
Carole Trapp  
Jael Van Boening  
Melanie Samo  
Tadpole Creek Creations  
Melissa Shockley  
the OnionTree  
Valerie Lillich  
Tornado Alley Press  
V Greetings  
Hayley Ramsey  
Zombie Pals

5/22/2012

**Clark, Connie**

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**To:** Barnett, Mary; Bossemeyer, Steva  
**Subject:** LIV Music & Arts Festival CE#33529

This is a list of participating TM vendors/Artist who will be participation in the LIV Fest on June 16, 2012 11:00 am – 11:00 pm on 1<sup>st</sup> Street, in conjunction with the Orpheum Performing Arts Theater, 200 North Broadway. These are all non-food vendors.

Lori Copley  
Becky Van Dyke  
Cindy Pursell  
Brenda Hoefer  
Cindy Finnesy  
Veronica Dowty  
Eloyce Meis  
Angela Stuhlsatz  
Kayann Ausherman  
Kelsey Metzinger / Bungalow 26

Connie Clark  
Community Event Coordinator  
City of Wichita ~ Division of Arts & Cultural Services  
[csclark@wichita.gov](mailto:csclark@wichita.gov)  
(316) 303-8630  
(316) 858-7960 - fax  
[www.wichita.gov](http://www.wichita.gov)

**CITY OF WICHITA**  
**City Council Meeting**  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** Approval of Encroachment Agreement for 206 East 18<sup>th</sup> Street North (District VI)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the agreement.

**Background:** Market Street Lofts, LP (MSL) owns the multifamily building located at 206 East 18<sup>th</sup> Street North. The owners recently renovated the building. As part of the finalization of the renovation process, MSL commissioned a boundary survey. The survey indicated several minor encroachments by the building on to City right-of-way. In order to complete the redevelopment process, the encroachments need to be addressed.

**Analysis:** The City's Legal Department has a standard form for resolving encroachments. These types of encroachments are relatively common in developed areas of the City. Resolution of the encroachments will facilitate the redevelopment and utilization of this property.

**Financial Considerations:** There is no financial cost to the City. Redevelopment of the property will increase the property tax valuation in the area.

**Goal Impact:** The approval of this agreement facilitates Economic Vitality and Affordable Living and Core Area and Neighborhood Vitality by facilitating the development of affordable housing in a redeveloping neighborhood.

**Legal Considerations:** The Law Department has approved the agreement as to form.

**Recommendation/Action:** It is recommended that the City Council approve the agreement and authorize the necessary signatures.

**Attachments:** Agreement and survey.

## AGREEMENT

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Wichita, Kansas, hereinafter referred to as "Party of the First Part," and Market Street Lofts, LP, hereinafter referred to as "Party of the Second Part."

WITNESSETH:

WHEREAS, the Party of First Part is the holder of certain right-of-way easements, which are described as follows: 18th Street North right-of-way between 206 E. 18<sup>th</sup> Street North (the "Building") and Market Street, which also includes the alleyway behind the Building located in Wichita, Sedgwick County, Kansas and

WHEREAS, the Party of the Second Part is the owner of real property legally described as follows:

Lots 1, 3, 5 and 7, Block 8, in Fairview Addition to the City of Wichita, Sedgwick County, Kansas. NE ¼, Sec. 8, T27S, R1E

WHEREAS, the Party of the Second Part intends and desires to occupy certain improvements located on said real property described above, which improvements encroach into the easements held by Party of the First Part, as more specifically described in Exhibit "A", which is attached hereto and incorporated herein by reference, hereinafter referred to as "the Encroachments".

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties it is agreed as follows:

1. The Party of the First Part hereby agrees to permit the Party of the Second Part to occupy certain improvements as described above (the Encroachments), and specifically waives any and all rights of action in law or equity against Party of the Second Part arising out of Party of the Second Part's occupancy thereof.
2. The Party of the Second Part agrees to indemnify and hold harmless the Party of the First Part from any and all claims resulting from the Party of the Second Part's use and occupancy of the Encroachments.
3. This Agreement shall not become effective until the Party of the Second Part has caused this original instrument to be recorded with the Register of Deeds, Sedgwick County, Kansas, and has furnished a duplicate recorded copy of this agreement to the Party of the First Part. This agreement may be terminated by the Party of the First Part upon failure of the Party of the Second Part to comply with all of the terms of this agreement.
4. The provisions contained herein are to be construed as covenants running with the land and may be enforced both by and against any titleholder of the affected property so long as the Encroachments are in existence.

IN WITNESS WHEREOF, the parties have executed this agreement the date and year first above written.

**PARTY OF THE FIRST PART  
CITY OF WICHITA, KANSAS**

\_\_\_\_\_  
Carl Brewer, Mayor

**ATTEST:**

\_\_\_\_\_  
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

STATE OF KANSAS                    )  
  ) ss:  
SEDGWICK COUNTY                )

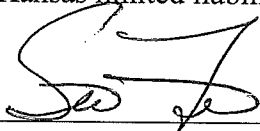
BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Carlos Mayans, Mayor of the City of Wichita, Kansas, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same for and on behalf, and as the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

**PARTY OF THE SECOND PART**  
**Market Street Lofts, LP, a Kansas**  
**limited partnership**

By Its General Partner: Market Street GP, LLC,  
a Kansas limited liability company

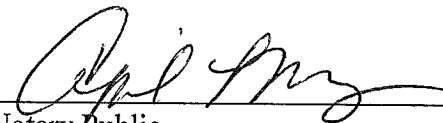


Steven D. Foutch, Managing Member

STATE OF MISSOURI                     )  
  ) ss:  
PLATTE COUNTY                         )

BE IT REMEMBERED, that on this 8<sup>th</sup> day of May, 2012, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Steven D. Foutch, Managing Member of Market Street GP, LLC, which is the General Partner of Market Street Lofts, LP personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same for and on behalf, and as the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

  
\_\_\_\_\_  
Notary Public

APRIL L. MCGHAY  
My Commission Expires  
February 15, 2014  
Platte County  
Commission #10935265

## **EXHIBIT "A"**

The building located at 206 E. 18<sup>th</sup> Street North, Wichita, Kansas (the "Building") encroaches into right of way of 18<sup>th</sup> Street North by 0.70 feet at the southwest corner of the Building and by 0.77 feet at the southeast corner of the Building.

The Building encroaches into the alley by 0.24 feet at the southeast corner of Building and by 0.07 feet at the northeast corner of the Building.





**Second Reading Ordinances for June 5, 2012 (first read on May 22, 2012)**

**A. Design Budget and Amending Ordinance for East Kellogg, Cypress to 127<sup>th</sup> Street East (Project I) – Design.**

ORDINANCE NO. 49-275

An ordinance amending Ordinance No. 49-262 of the City of Wichita, Kansas declaring Kellogg, between Cypress and 127th Street East (472-84615) to be a main trafficway within the city of Wichita Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

**B. PUD2012-00001 – City Planned Unit Development request from SF-5 Single-family Residential (“SF-5”) zoning to create PUD #37, Nahola Planned Unit Development; generally located east of I-235, between Central and Murdock Avenues, and between Elder and Doris Streets. (District VI)**

ORDINANCE NO. 49-276

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

**C. A-12-04 – Annexation of street right-of-way segments abutting the City Limits. (District V)**

ORDINANCE NO. 49-277

An ordinance including and incorporating certain blocks, parcels, pieces and tracts of land within the limits and boundaries of the City of Wichita, Kansas. (A12-04)

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

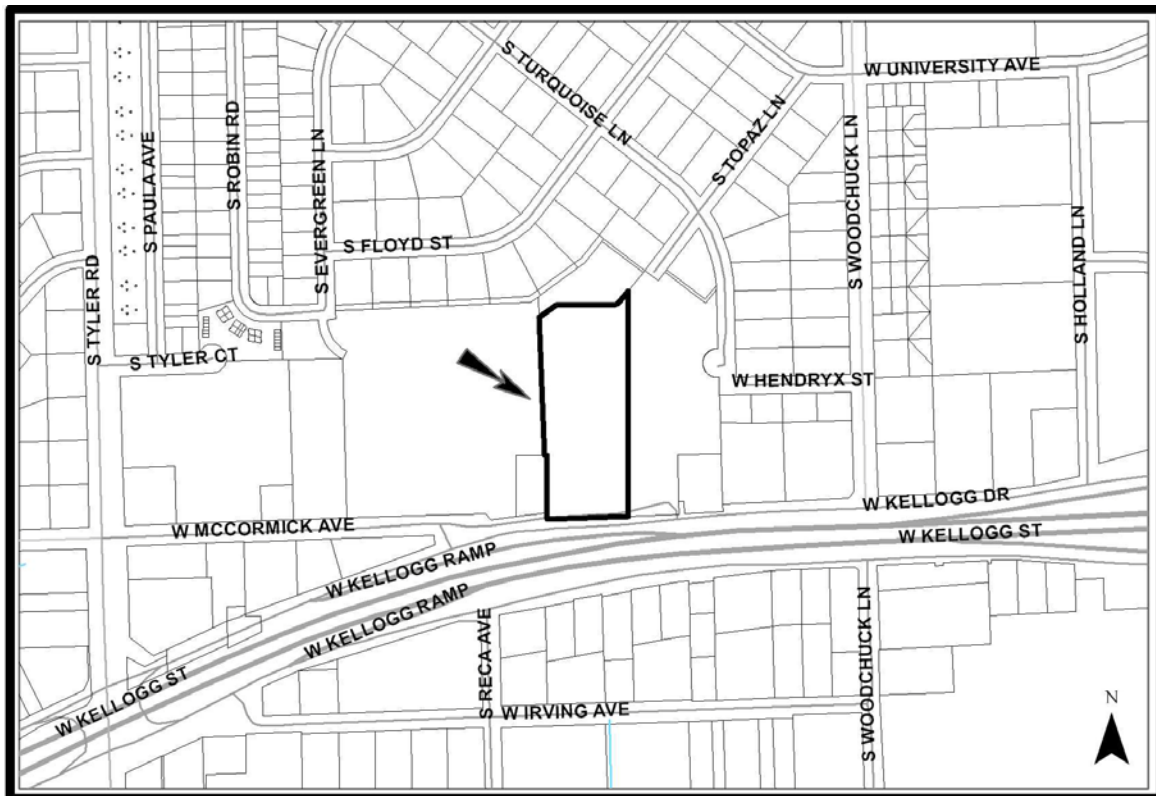
**SUBJECT:** ZON2012-00013 Associated with CUP2012-10 – City zone change from LC Limited Commercial (“LC”) to GC General Commercial (“GC”) and Amendment #6 to DP-50, the Carriage House Commercial Community Unit Plan to allow a body shop, and associated vehicle storage and car wash; generally located east of Tyler Road, on the north side of Kellogg Drive/US 54 (8200 W. Kellogg Drive). (District V)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

**MAPC Recommendation:** Approve (12-0).

**MAPD Staff Recommendation:** Approve.



**Background:** The LC Limited Commercial (“LC”) zoned site, Parcel #4, is located within the LC and GC General Commercial (“GC”) zoned DP-50, the Carriage House Commercial Community Unit Plan (“CUP”). DP-50 is located east of Tyler Road, on the north side of Kellogg Street/US 54. The applicant is requesting a zone change from LC to GC and a CUP amendment to DP-50, to allow “Vehicle Repair, General” on Parcel #4. The Unified Zoning Code defines Vehicle Repair, General as “an establishment primarily engaged in painting of or body work to motor vehicles or heavy equipment; typical uses include paint and body shops.” The GC zoning district is the first district that allows Vehicle Repair, General. One of the site’s proposed uses is “outdoor vehicle sales,” which is the current business of the applicant, the Davis-Moore Chevrolet Dealership. General Provision #35 states that “No body or fender work shall be done on the premises (Parcel #4) without first obtaining GC zoning.” Body or fender work is considered Vehicle Repair, General, thus the application for GC zoning and the amendment to DP-50.

The request, if approved, would allow an expansion of the services that currently support the dealership. Besides the sale of cars and light trucks, the dealership provides maintenance and repair of customers’ cars and light trucks (“Vehicle Repair, Limited”) and a car wash for the dealership’s inventory of vehicles and their customers’ vehicles. Both Vehicle Repair, Limited, and a car wash are permitted in the LC zoning district, with considerations as listed the Unified Zoning Code (“UZC”). Both Vehicle Repair, Limited, and a car wash (services) are listed as proposed uses in DP-50, although not in the subject site. These two services provided for the dealership’s customers are considered “Accessory Uses” to the “Principle Use,” which is outdoor vehicle sales.

**Analysis:** At the MAPC meeting held May 3, 2012, the MAPC voted (13-0) to approve the request for GC zoning and the amendment to DP-50, as a consent item, subject to a Lot Split and with the following conditions:

1. DP-50 Parcel #4’s Proposed Uses shall be amended to include “Vehicle Repair, General” and a car wash as accessory to the site’s car dealership. All Vehicle Repair, General work shall be done indoors. Vehicle Repair, General and a car wash as accessory to the site’s car dealership will be allowed in the GC zoned portion of Parcel 4.
2. DP-50 Parcel #4’s Proposed Uses shall be amended to include vehicles that are waiting for repair in the Vehicle Repair, General building may be stored for longer than 72 hours outside (Vehicle Storage), behind a wall constructed of approved materials, with a gated entrance; no wrecking or salvage is permitted. Vehicle storage shall be accessory to the site’s car dealership shall be confined to the GC zoned portion of Parcel #4.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the DP-50 Amendment the Zoning Administrator may, with the concurrence of the Planning Director, declare the DP-50 Amendment null and void.
4. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after final approval of this case, or the request shall be considered denied and closed.

No protests were received during the two-week protest period following the MAPC hearing.

**Financial Considerations:** There are no financial considerations in regards to the zoning request.

**Goal Impact:** The application will promote Economic Vitality.

**Legal Considerations:** The ordinance has been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:** Adopt the findings of the MAPC and approve the zone change, subject to the additional recommended provisions of Amendment #6 and subject to a Lot Split; instruct the

Planning Department to forward the ordinance for first reading when the Lot Split is completed (simple majority required).

**Attachments:**

- Ordinance
- MAPC Minutes

ORDINANCE NO. 49-284

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF WICHITA, KANSAS.

**SECTION 1.** That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

**Case No. ZON2012-00013**

Zone change from LC Limited Commercial ("LC") to GC General Commercial ("GC") on an approximately 4.85-acre property described as:

Lot 2, Block 1, Carriage House Plaza 4th Addition to Wichita, Sedgwick County, Kansas, EXCEPT that part beginning at the Northwest corner, thence Northeast 204.62 feet, thence Northeasterly 92.5 feet, thence Southeast 178.47 feet, thence Southwest 134.86 feet, thence Southwest 4.32 feet, thence Southwest 5.86 feet, thence West 204.72 feet, thence Southwest 75.13 feet to the West line of lot 2, thence North 73.89 feet to the beginning. Wichita, Sedgwick County, Kansas; generally located north of Kellogg Drive/US 54 and east of Tyler Road.

**SUBJECT A LOT SPLIT WITHIN A YEAR OF APPROVAL BY THE GOVERNNG BODY**

**SECTION 2.** That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

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Carl Brewer - Mayor

**ATTEST:**

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Karen Sublett, City Clerk

(SEAL)

Approved as to form: \_\_\_\_\_  
Gary E. Rebenstorf, City Attorney

## **EXCERPT MINUTES OF THE MAY 3, 2012 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING**

**Case No.: ZON2012-13 and CUP2012-10** - Davis-Moore Real Estate (owner/applicant) and K.E. Miller Engineering, PA c/o Kirk Miller (agent) request a Minor Amendment to CUP DP-50, to allow vehicle repair general and outdoor storage on property described as:

**BACKGROUND:** The LC Limited Commercial (“LC”) zoned site, Parcel #4, is located within the LC and GC General Commercial (“GC”) zoned DP-50, the Carriage House Commercial Community Unit Plan (“CUP”). DP-50 is located east of Tyler Road, on the north side of Kellogg Street/US 54. The applicant is requesting a zone change from LC to GC and a CUP amendment to DP-50, to allow “Vehicle Repair, General” on Parcel #4. The Unified Zoning Code defines Vehicle Repair, General as “an establishment primarily engaged in painting of or body work to motor vehicles or heavy equipment; typical uses include paint and body shops.” The GC zoning district is the first district that allows Vehicle Repair, General. One of the site’s proposed uses is “outdoor vehicle sales,” which is the current business of the applicant, the Davis-Moore Chevrolet Dealership. General Provision #35 states that “No body or fender work shall be done on the premises (Parcel #4) without first obtaining GC zoning.” Body or fender work is considered Vehicle Repair, General, thus the application for GC zoning and the amendment to DP-50.

The request, if approved, would allow an expansion of the services that currently support the dealership. Besides the sale of cars and light trucks, the dealership provides maintenance and repair of customers’ cars and light trucks (“Vehicle Repair, Limited”) and a car wash for the dealership’s inventory of vehicles and their customers’ vehicles. Both Vehicle Repair, Limited, and a car wash are permitted in the LC zoning district, with considerations as listed the Unified Zoning Code (“UZC”). Both Vehicle Repair, Limited, and a car wash (services) are listed as proposed uses in DP-50, although not in the subject site. These two services provided for the dealership’s customers are considered “Accessory Uses” to the “Principle Use,” which is outdoor vehicle sales. To introduce either Vehicle Repair, Limited or a car wash as stand-alone businesses on the site would require, at the least, an Adjustment to DP-50.

Parcel #4 is partial developed and the Vehicle Repair, General, use will be completely enclosed within a new building. The applicant has been preparing for this expansion by vacating easements and moving utilities; VAC2011-00029. Vehicles that are waiting for repair in the proposed paint and body shop may be stored for longer than 72 hours outside, therefore the applicant also request a “Vehicle Storage Yard;” this is not a “Wrecking/Salvage Yard.”

The site is the east most portion of the LC and GC zoned 32.56-acre CUP DP-50. A big box home improvement business, Home Depot, abuts the west side of the site, with another large commercial building (with multiple tenants) and two fast food restaurants finishing out DP-50’s development, west to Tyler Road. LC zoned retail abuts the east side of the site. A LI Limited Industrial (“LI”) zoned mix of retail, paint and body shops, car lots, vehicle repair shops, a motel and light industrial uses are located south of the site across Kellogg/US 54. Southwest of the site, across McCormick Avenue are GC zoned retail, a credit union and fast food restaurants. A SF-5 Single-Family Residential (“SF-5”) zoned single-family residential neighborhood abuts the north and northeast side of the site.

**CASE HISTORY:** The site is part of the Carriage House Plaza Fourth Addition, which was recorded with the Register of Deeds August 27, 1998. CUP DP-50 was approved in 1973. Numerous adjustments and amendments have been made to DP-50 since its approval. VAC2011-00029 was approved by the MAPC.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Single-family residences
SOUTH:	LI, GC	Retail, paint and body shops, car lots, vehicle repair shops and light industrial uses, motel, credit union, fast food restaurants
EAST:	LC	Retail
WEST:	LC, GC	Big box home improvement, commercial, fast food restaurants

**PUBLIC SERVICES:** The site has access onto McCormick Avenue, a two lane frontage street with a central turn lane. From McCormick vehicular traffic can access the four-lane (with a center turn lane and accel-decel lanes) arterial Tyler Road. The expressway Kellogg/US 54 Highway is accessed off of Tyler. All municipal services are available.

**CONFORMANCE TO PLANS/POLICIES:** The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan designates this site as appropriate for Regional Commercial uses, which are defined as commercial uses that have a significant regional market draw. The site's current use as a Chevrolet Dealership (a major automobile dealership) is an appropriate use. The Comprehensive Plan has an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments; Land Use-Residential Objective II. B). Strategy II.B3 states that there is a need to evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise or safety hazards upon residential areas.

**RECOMMENDATION:** A significant percentage of body work now consists of attaching replacement panels, with less noise than older methods of metal body work. Codes now require that vehicle painting is done with ventilation systems which mitigate odors and particulate matter. If the requested Vehicle Repair, General, takes place exclusively indoors, it should have no more effect on neighboring properties than the current Vehicle Repair, Limited, with both being accessory/in support of the site's principle use as a car dealership. Based upon information available prior to the public hearings, planning staff recommends that the requested GC zoning and the proposed amendment be APPROVED, subject to the following conditions:

1. DP-50 Parcel #4's Proposed Uses shall be amended to include "Vehicle Repair, General" as accessory to the site's car dealership and all Vehicle Repair, General work shall be done indoors. Vehicle Repair, General, as accessory to the site's car dealership will be allowed in the GC zoned portion of Parcel 4.
2. Amend General Provision #10, by adding "no bay doors on Parcel 4 shall be facing the north abutting SF-5 zoned neighborhood."
3. DP-50 Parcel #4's Proposed Uses shall be amended to include vehicles that are waiting for repair in the Vehicle Repair, General building may be stored for longer than 72 hours outside (Vehicle Storage), behind a wall of approved materials, with a gated entrance; no wrecking or salvage permitted. Vehicle storage shall be accessory to the site's car dealership shall be confined to the GC zoned portion of Parcel #4.
4. If the Zoning Administrator finds that there is a violation of any of the conditions of the DP-50 Amendment #5, the Zoning Administrator may, with the concurrence of the Planning Director, declare the DP-50 Amendment #5 null and void.
5. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after final approval of this case, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is the east most portion of the LC and GC zoned 32.56-acre CUP DP-50. A big box home improvement business, Home Depot,



abuts the west side of the site, with other another large commercial building (with multiple tenants) and two fast food restaurants finishing out DP-50's development, west to Tyler Road. LC zoned retail abuts the east side of the site. A LI Limited Industrial ("LI") zoned mix of retail, paint and body shops, car lots, vehicle repair shops, a motel and light industrial uses are located south of the site across Kellogg/US 54. Southwest of the site, across McCormick Avenue are GC zoned retail, a credit union and fast food restaurants. A SF-5 Single-Family Residential ("SF-5") zoned single-family residential neighborhood abuts the north and northeast side of the site.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC subject to the development standards contained in DP-50. The site's car dealership could continue to be used under the current zoning and CUP restrictions.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: General Provision #35 of DP-50 states that "No body or fender work shall be done on the premises (Parcel #4) without first obtaining GC zoning." Body or fender work is considered Vehicle Repair, General, thus the application for GC zoning and the amendment to DP-50. General Provision #35 anticipated the expansion of accessory uses to support the principle use, a major car dealership. If the requested Vehicle Repair, General, takes place exclusively indoors, it should have no more effect on neighboring properties than the current Vehicle Repair, Limited, with both being accessory/in support of the site's principle use as a car dealership. A significant percentage of body work now consists of attaching replacement panels, with less noise than older methods of metal body work. Codes now require that vehicle painting is done with ventilation systems which mitigate odors and particulate matter. If the Vehicle Storage remains accessory to the site's car dealership, confined to the GC zoned portion of site and located entirely behind a wall of approved materials, with a gated entrance it should have no more effect on neighboring properties than the other permitted uses of DP-50; no wrecking or salvage permitted. The requested CUP amendment and zone change should have no greater impact on nearby property than any other land uses permitted in the LC and GC zoned DP-50.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan designates this site as appropriate for Regional Commercial uses, which are defined as commercial uses that have a significant regional market draw. The site's current use as a Chevrolet Dealership (a major automobile dealership) is an appropriate use. The Comprehensive Plan has an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments; Land Use-Residential Objective II. B). Strategy II.B3 states that there is a need to evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise or safety hazards upon residential areas; see the above #3 finding.
5. Impact of the proposed development on community facilities: The proposed CUP amendment and zone change should have no measurable impact on community facilities.

**KIRK MILLER, K.E. MILLER ENGINEERING, PA, AGENT FOR THE APPLICANT** said they are in agreement with staff comments except condition #2 relative to bay doors facing north. He said the north side of the building is where the access for repair work is located. He said there is a drainage easement, reserve, berm and masonry wall to the north of the site that will act as a buffer from the residential area. He requested that condition #2 be removed from the conditions of approval.

**FOSTER** asked if the structure would align with the structure to the west.

**MILLER** said no, it will align with the building to the east which is further south.

**ALDRICH** asked if the remodeling of the property to the east will have any effect on the site plan.

**MILLER** replied that there will be no effect to this property and mentioned that the property to the east is under the same ownership.

**ALDRICH** asked for feedback from staff on the request to eliminate condition #2.

**LONGNECKER** said as long as the reserve to the north of the property remains at the current size and configuration with the 80 foot setback, staff is okay with the request to eliminate condition #2.

**SHERMAN** asked if the applicant was the owner of the reserve.

**LONGNECKER** said it is all part of the same plat. He said if Home Depot wants to reduce the size of the reserve and amend the text that would require another public hearing.

**MOTION:** To approve subject to staff recommendation with the elimination of condition #2.

**DENNIS** moved, **JOHNSON** seconded the motion, and it carried (12-0).

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City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** VAC2011-00027 - Request to vacate portions of a utility easement and a blanket easement created by vacated street right-of-ways; generally located north of 17th Street North and east of Hillside Avenue. (District I)

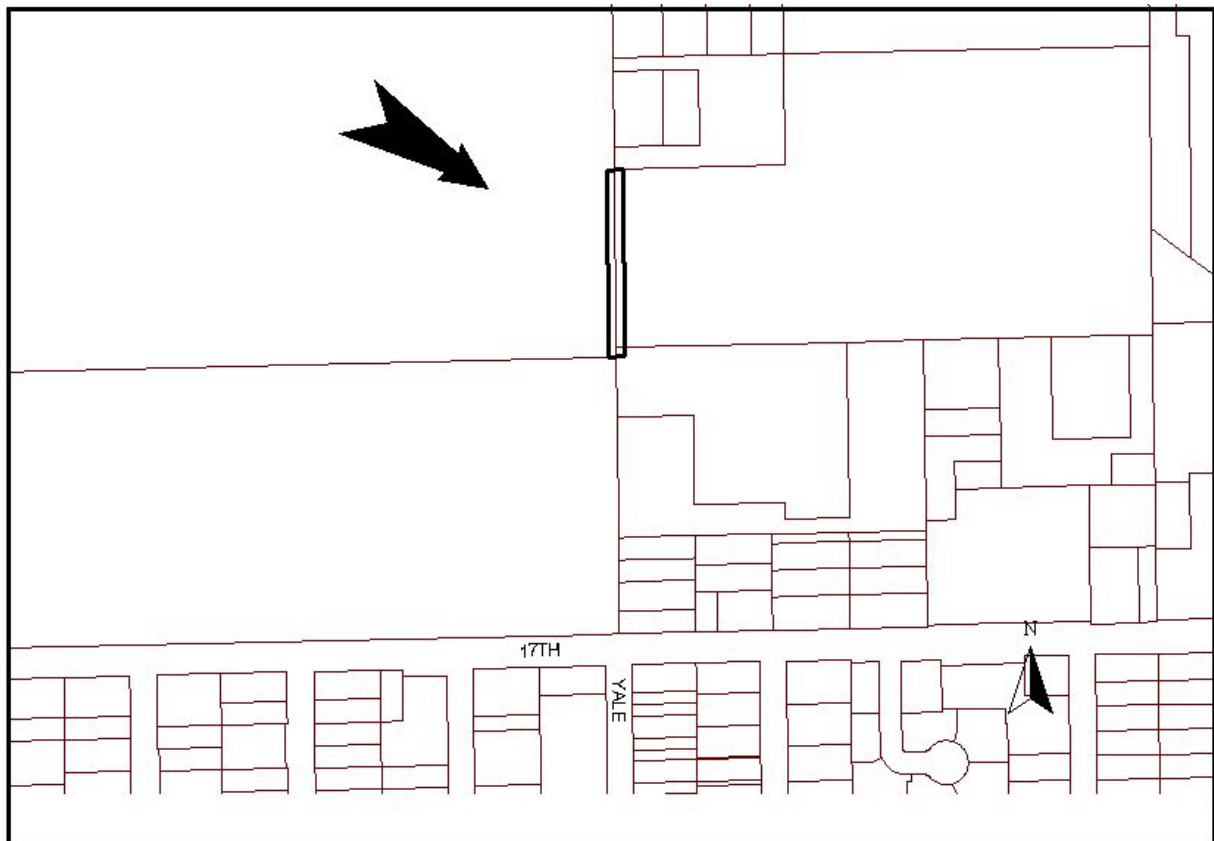
**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

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**Staff Recommendation:** Staff recommends approval of the vacation request.

**MAPC Recommendation:** The Metropolitan Area Planning Commission (MAPC) recommended approval of the vacation request.



**Background:** The applicant proposes to vacate the described portions of the easements to allow the expansion of the Rhatigan Student Center that is located on the Wichita State University campus. The applicant relocated utilities located within the easements and provided new easements to cover them; DOC#/FLM-PG-29275933 and DOC#/FLM-PG-29275934.

**Analysis:** The MAPC voted (10-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

**Financial Considerations:** All improvements are to City standards and at the applicant's expense.

**Goal Impact:** The application supports the City's goal to ensure Efficient Infrastructure.

**Legal Considerations:** The Law Department has reviewed and approved, as to form, the Vacation Order. A certified copy of the Vacation Order will be recorded with the Register of Deeds.

**Recommendation/Actions:** It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

**Attachments:** None.

**City of Wichita**  
**City Council Meeting**  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** VAC2012-00008 - Request to vacate a portion of platted complete access control; generally located southeast of the 135<sup>th</sup> Street West & 31<sup>st</sup> Street South intersection and within the City of Wichita's three-mile ring subdivision jurisdiction. (County Commission District 3)

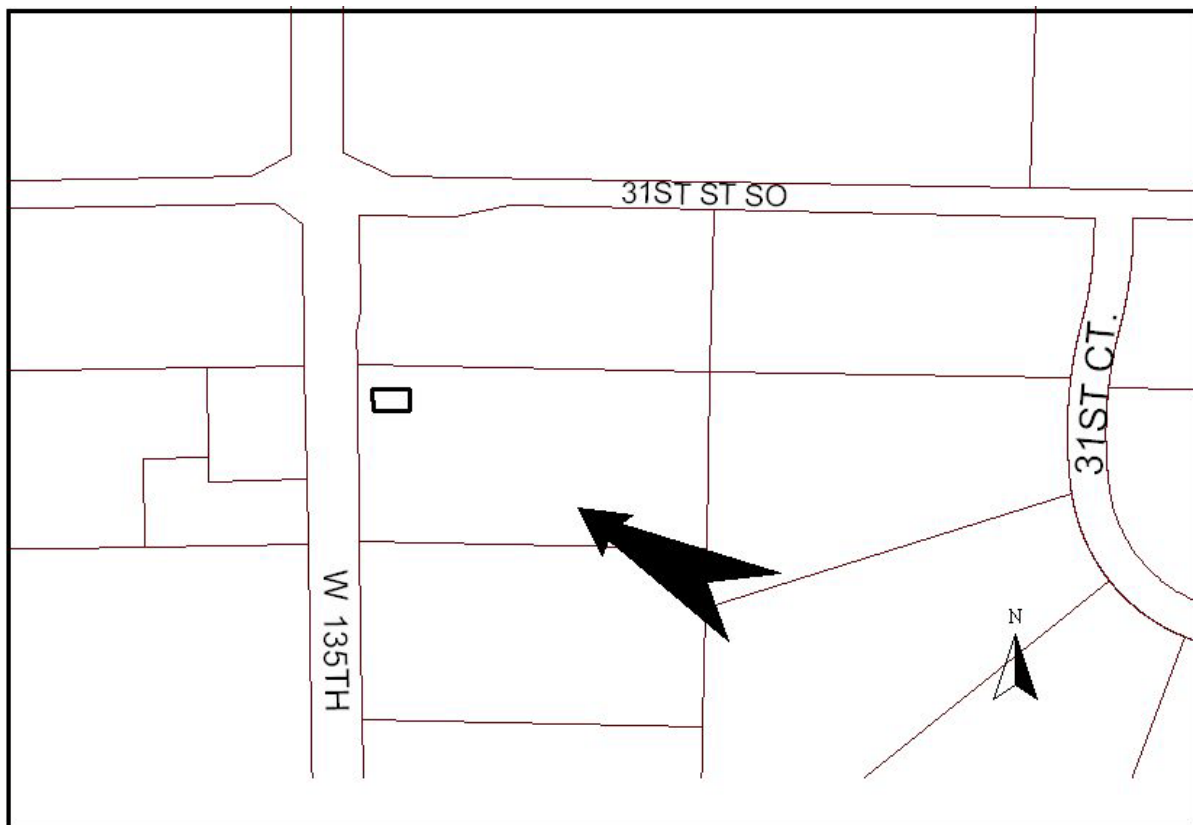
**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

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**Staff Recommendation:** Staff recommends approval of the vacation request.

**MAPC Recommendation:** The Metropolitan Area Planning Commission (MAPC) recommended approval of the vacation request.



**Background:** The applicant proposes to shift the platted permitted access onto 135<sup>th</sup> Street West from the south 20 feet of the west lot line of Lot 3, Block A, Overview Hills Addition to a point beginning 50 feet from the north end of the west lot line of said lot. This would place the applicant's drive approximately 50 feet from the abutting northern property's (Lot 4, Block A, Overview Hills Addition) drive onto 135<sup>th</sup>. The abutting northern property was platted for access onto 31<sup>st</sup> Street South, not 135<sup>th</sup>. On the property located west of the site, across 135<sup>th</sup>, there is a circle drive onto 135<sup>th</sup> facing the general area where the applicant's proposed driveway will go. 31<sup>st</sup> is an unpaved Afton Township Road; while 135<sup>th</sup> is a paved County road. There are no public utilities located in area of the vacation request. The Overview Hills Addition was recorded with the Register of Deeds October 24, 2001.

**Analysis:** The MAPC voted (11-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed. Because the site is located in Sedgwick County, but within the City of Wichita's three-mile ring subdivision jurisdiction, consideration and recommendation by the Wichita City Council, and consideration and final action by the Sedgwick County Board of County Commission is required.

**Financial Considerations:** All improvements are to City standards and at the applicant's expense.

**Goal Impact:** The application supports the City's goal to ensure an Efficient Infrastructure.

**Legal Considerations:** The Law Department has reviewed and approved, as to form, the Vacation Order. A certified copy of the Vacation Order will be recorded with the Register of Deeds.

**Recommendation/Actions:** It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

**Attachments:** None.

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** VAC2012-00011 - Request to vacate platted contingent street right-of-ways (ROWs), generally located east of 135<sup>th</sup> Street West, south of 21<sup>st</sup> Street North, at the end of 21<sup>st</sup> Court North. (District V)

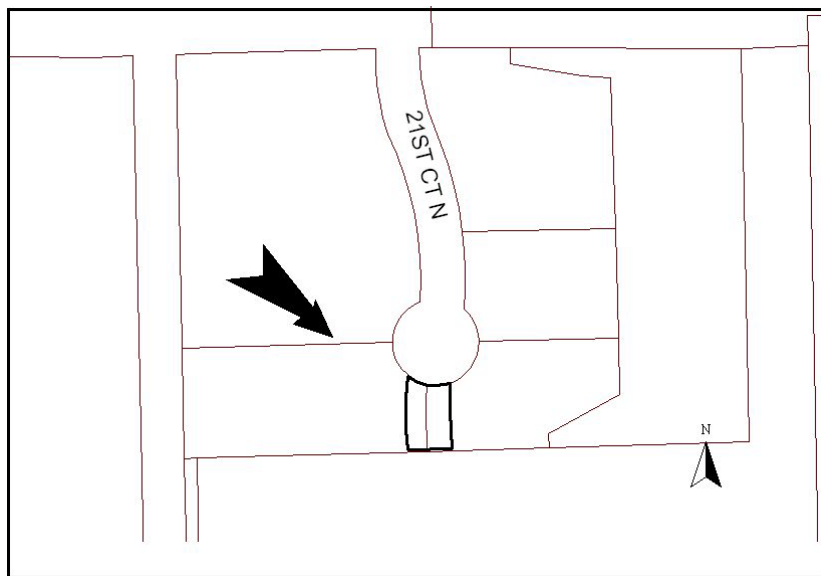
**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

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**Staff Recommendation:** Staff recommends approval of the vacation request.

**MAPC Recommendation:** The Metropolitan Area Planning Department Commission (MAPC) recommends approval of the vacation request.



**Background:** The Eberly Farm Addition was recorded on December 9, 2005, and contains a 70-foot wide contingent street dedication extending from the cul-de-sac to the south line of the plat. The Eberly Farm 2<sup>nd</sup> Addition is a replat of the easterly portion of the Eberly Farm Addition and was recorded on March 11, 2010. The replat contains a 35-foot contingent street dedication. The plat's text of both plats describes the contingent dedication of right-of-way (ROW) as follows: "The contingent street dedication shall become effective in the event that the appropriate governing body determines a need for the right-of-way for any street-related purposes."

The applicant is the abutting property owner to the east and west of the contingent rights-of-way. The developed property to the south has access to the street to the west and unpaved access to 21<sup>st</sup> Street North.

No manholes, water or sewer lines are located in the described ROWs. County Public Works has confirmed that no drainage facilities are located in the described ROWs and is in agreement with the proposed vacation. Westar Energy has a 10-foot utility easement in the east 35 feet of the contingent right-of-way that contains Westar equipment, which needs to be retained for easement.

**Analysis:** The MAPC voted (10-0-1) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

**Financial Considerations:** All improvements are to City standards and at the applicant's expense.

**Goal Impact:** The application supports the City's goal to ensure an Efficient Infrastructure.

**Legal Considerations:** The Law Department has reviewed and approved, as to form, the Vacation Order. A certified copy of the Vacation Order will be recorded with the Register of Deeds.

**Recommendation/Actions:** It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

**Attachment:** No attachments are necessary for this vacation request.



City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

**SUBJECT:** DER2012-00001 – Approval of Subdivision Regulation Amendments Regarding Reconfiguration of Reserves in Lot Splits. (All Districts)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

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**Staff Recommendation:** Staff recommends approval of the amendments.

**MAPC Recommendation:** MAPC recommends approval of the amendments. (11-0)

**Background:** Included in the attached Ordinance are revisions that are proposed to Article 6 “Lot Splits” of the Wichita-Sedgwick County Subdivision Regulations. Currently, if the boundaries of a stormwater facility platted as a reserve need to be revised, the only process that is available to accomplish that task is to replat the reserve. Replatting takes sixty to seventy days to complete and requires public hearings and governing body approval.

Metropolitan Area Planning Commission recommends that a new section be added to the Subdivision Regulations that allows stormwater management facilities, platted as reserves, to be reconfigured through the lot split process in order to comply with the stormwater management and pollution prevention regulations. The lot split review is an administrative procedure requiring approval by the Planning Director.

The lot split procedure would be permitted in lieu of a replat, and allow an unlimited number of lot splits for the reconfiguration of a reserve. In addition, a vacation case shall be required for any other applicable vacation activity in conjunction with the lot split (see attached delineated Section 6-104).

The Stormwater Advisory Board and Stormwater Management Advisory Board have reviewed the amendments and have concurred with their approval.

**Financial Considerations:** There are no financial considerations associated with the Ordinance.

**Goal Impact:** Approval of the Ordinance will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

**Legal Considerations:** The City Council and the Board of Sedgwick County Commissioners will need to approve the amendments in order for them to be in full effect.

The City’s Law Department and the County’s Legal Department have reviewed the amendments and approved as to form for the respective adopting Ordinance and Resolution.

**Recommendations/Actions:** It is recommended that the City Council approve the amendments to the Wichita-Sedgwick County Subdivision Regulations and place the Ordinance on first reading.

**Attachments:** Ordinance  
MAPC Minutes  
Amendments to the Wichita-Sedgwick County Subdivision Regulations (Delineated)

(150004) Published in The Wichita Eagle on June 15, 2012

ORDINANCE NO. 49-285

AN ORDINANCE AMENDING THE “WICHITA-SEDGWICK COUNTY SUBDIVISION REGULATIONS, DECEMBER 4, 2008 EDITION,” AS ADOPTED BY REFERENCE IN CITY OF WICHITA CODE SEC. 28.05.010 AS AMENDED BY ORDINANCE NO. 48-180

WHEREAS, under the authority of K.S.A. 12-741, et seq., the City of Wichita and Sedgwick County desire to amend The Wichita-Sedgwick County Subdivision Regulations to amend provisions regarding reconfiguration of reserves in lot splits.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA;

SECTION 1. Section 28.05.015 of the Code of the City of Wichita shall read as follows:

Article 6, “Lot Splits”, of “The Wichita-Sedgwick County Subdivision Regulations, January 28, 1999 Edition” as adopted by reference in Section 28.05.010 of the Code of the City of Wichita as amended by Ordinance No. 48-180 is hereby amended to add the following section:

Section 6-104. Reconfiguration of Reserves

Stormwater management facilities, typically platted as reserves, may need to be vacated and re-established elsewhere within the Subdivision to comply with the applicable Wichita or Sedgwick County stormwater management and pollution prevention regulations. In lieu of a replat, an unlimited number of lot splits shall be permitted for the reconfiguration of a reserve. A vacation case shall be required for any other applicable vacation activity in conjunction with the lot split.

SECTION 2. This ordinance shall be included in the Code of the City of Wichita and shall be effective upon its adoption and publication once in the official City newspaper.

PASSED AND ADOPTED by the governing body at Wichita, Kansas, this 12th day of June, 2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

APPROVED AS TO FORM:

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Gary E. Rebenstorf, Director of Law

**EXCERPT MINUTES OF THE MAY 3, 2012 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION HEARING**

**2-1. DER2012-00001: Amendments to the Subdivision Regulations – Section 6-104 of the Wichita-Sedgwick County Subdivision Regulations relating to reconfiguration of Reserves within Lot Splits.**

To comply with the Stormwater Management and Pollution Prevention Ordinance, the boundaries of reserves located in plats may need to be revised. The current lot split regulations do not allow a reserve to be reconfigured and a replat would be necessary. On March 29, 2012, the Subdivision Committee recommended that a new section be added to the lot split regulations that allows stormwater management facilities, typically platted as reserves, to be vacated and re-established elsewhere within the Subdivision to comply with the Stormwater Management and Pollution Prevention Ordinance (attached delineated Section 6-104). The lot split review is an administrative procedure requiring approval by the Planning Director.

The lot split procedure would be permitted in lieu of a replat, and allow an unlimited number of lot splits for the reconfiguration of a reserve for non-residential lots. In addition, a vacation case shall be required for any other applicable vacation activity in conjunction with the lot split.

Wichita City Council and the Board of Sedgwick County Commissioners will need to approve the amendments.

The Stormwater Advisory Board and Stormwater Management Advisory Board have reviewed the amendments and have concurred with their approval. The City's Law Department and the County's Legal Department have reviewed the amendments and approved as to form for the respective adopting Ordinance and Resolution.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**ALDRICH** moved, **DENNIS** seconded the motion, and it carried (11-0).

(C) The Director of Planning may make such additional requirements as deemed necessary to carry out the intent and purpose of existing land development regulations and governing body policy. Requirements may include, but shall not be limited to, installation of public facilities, dedication of right-of-way and easements, and submission of covenants for the protection of other landowners in the original subdivision.

(D) The Director of Planning or his designated agent shall, in writing, either approve with or without conditions or disapprove the lot split within thirty (30) days of application, except where review by the Subdivision Committee and Utility Advisory Committee is required. If approved, he shall sign and furnish a certificate of approval to be affixed to the lot split survey. He shall forward a certified copy of the lot split to the Register of Deeds for recording. He shall also forward a certified copy to the official designated to issue building or occupancy permits. A copy shall be kept in the office of the Planning Department, and a copy shall be furnished to the applicant.

***6-104. Reconfiguration of Reserves.*** *Stormwater management facilities, typically platted as reserves, may need to be vacated and re-established elsewhere within the Subdivision to comply with the applicable Wichita or Sedgwick County stormwater management and pollution prevention regulations. In lieu of a replat, an unlimited number of lot splits shall be permitted for the reconfiguration of a reserve. A vacation case shall be required for any other applicable vacation activity in conjunction with the lot split.*

City of Wichita  
City Council Meeting  
June 5, 2012

**TO:** Mayor and City Council

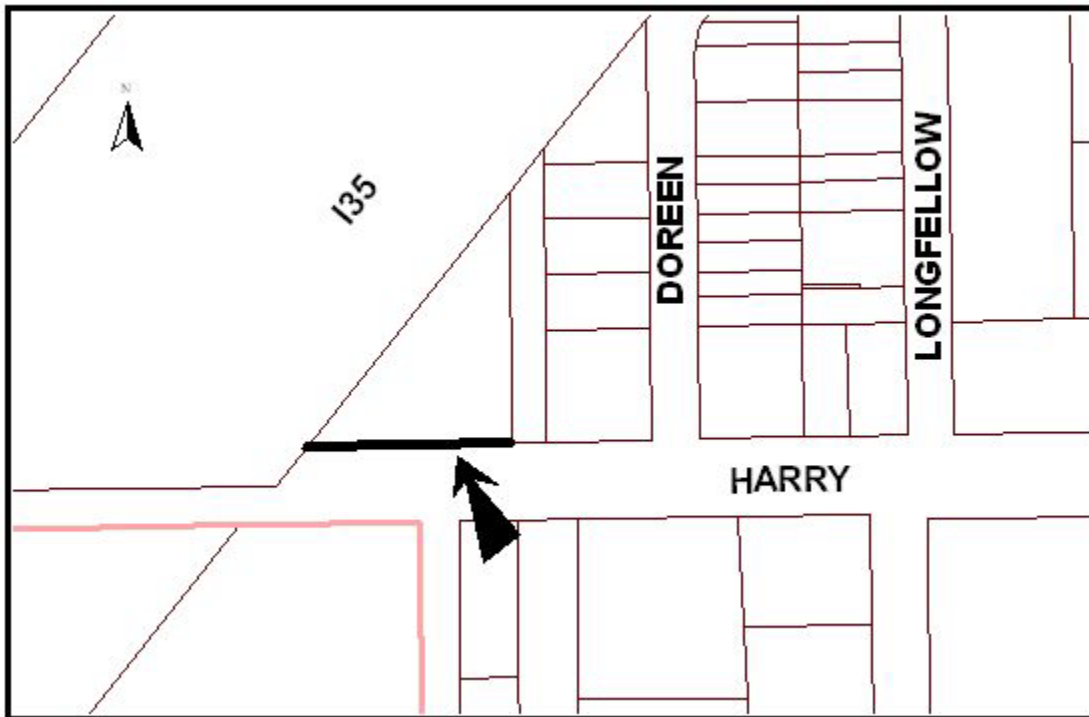
**SUBJECT:** DED2012-00006 Dedication of Access Control for property located on the north side of Harry, West of Rock Road. (District II)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA ACTION:** Planning (Consent)

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**Staff Recommendation:** Accept the Dedication.



**Background:** The Dedication is associated with Lot Split Case No. LSP2012-00008 (Broadmoor Addition and Putnam Addition) and was requested by Traffic Engineering.

**Analysis:** The Dedication DED2012-00006 is for the purpose of complete access control to reduce two access openings along Harry to one access opening.

**Financial Considerations:** There are no financial considerations associated with the Dedication.

**Goal Impact:** Approval of the Dedication will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

**Legal Considerations:** The Dedication has been approved as to form by the Law Department and will be recorded with the Register of Deeds.

**Recommendations/Actions:** It is recommended that the City Council accept the Dedication.

**Attachment:** Partial Dedication of Abutter's Access Rights.

**PARTIAL DEDICATION OF ABUTTER'S ACCESS RIGHTS**

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned Janyce L. Putnam Revocable Living Trust under agreement dated February 4, 1993, as amended, Janyce L. Putnam, Trustee, being the owner(s) of the following described real estate in Sedgwick County, Kansas, to wit:

**Parcel A**

Lot 4, Block K, Broadmoor Addition, Wichita, Sedgwick County, Kansas,  
TOGETHER with the east 44.03 feet of the south 144.25 feet of Lot 1,  
Putnam Addition, Wichita, Kansas, Sedgwick County, Kansas.

**Parcel B**

Lot 1, Putnam Addition, Wichita, Kansas, Sedgwick County, Kansas,  
EXCEPT the east 44.03 feet of the south 144.25 feet of said Lot 1.

do hereby transfer and convey to the City of Wichita, all abutter's rights of access, ingress and egress to said Lot 1, Putnam Addition to or from Harry Street over and across the south line of said Lot 1, Putnam Addition, to have and to hold the same forever, provided, however, that said Parcel "B" described above shall have one access opening to or from said Harry Street.

It being understood that this conveyance is a covenant running with the land and prohibits all subsequent owners thereof and all members of the public from entering upon said Lot 1, Putnam Addition from Harry Street except at the one point of ingress and egress, as permitted for said Parcel "B".



Partial Dedication of Abutter's Access Rights  
Page 2 of 2

Executed this 18<sup>th</sup> day of April, 2012.

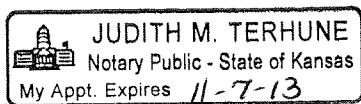
Janyce L. Putnam Revocable Living Trust,  
under agreement dated February 4, 1993, as  
amended, Janyce L. Putnam Trustee

By: Janyce L. Putnam  
Janyce L. Putnam, Trustee

STATE OF KANSAS            )  
SEDGWICK COUNTY        )       SS:

BE IT REMEMBERED, That on this 18<sup>th</sup> day of April, 2012,  
before me, a Notary Public, in and for the County and State aforesaid, came Janyce L. Putnam, Trustee of the Janyce L. Putnam Revocable Living Trust, under agreement dated February 4, 1993, as amended, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same.

IN WITNESS WHEREOF, I have set my and affixed my seal the day and year last above written.



Judith M. Terhune  
Notary Public

(My Appointment Expires: 11-7-13)

Approved as to form:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

**City of Wichita  
City Council Meeting  
June 5, 2012**

**TO:** Wichita Airport Authority

**SUBJECT:** Electrical Equipment and Cabling, Package 25  
Wichita Mid-Continent Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

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**Recommendation:** Approve the project.

**Background:** This project will make improvements to the Airport-owned electrical distribution system to upgrade electrical equipment in a substation, install electrical cabling, and make changes to improve the system's efficiencies and services. This project is included in the Capital Improvement Program.

**Analysis:** This project is an enabling project for the new terminal and parking garage and will install the equipment and cabling prior to the opening of these facilities. This project is the next phase of work on the electrical system that began with the installation of electrical duct banks in 2009. Professional Engineering Consultants was selected in 2008 to provide these services and supplemental agreements will be executed for this project when available.

**Financial Considerations:** The initial budget requested is \$500,000 to cover the initial expenses and consultant services. Once full project costs are determined, the project budget will be increased. The project will be paid for with General Obligation bonds reimbursed from Airport revenue.

**Goal Impact:** The Airport's contribution to the Economic Vitality of Wichita is promoted through infrastructure improvements which support development of the new terminal and parking garage.

**Legal Considerations:** This project does not utilize Airport Improvement Project funds, allowing Wichita Airport Authority to follow routine procurement procedures.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority initiate the project and approve the budget.

**Attachments:** None.